

The SECOND and LAST PART of
THE
C A S E
OF
IMPOTENCY, &c.
DEBATED.

VOLUME II.

CONTAINING

- I. The Tryal of MERVIN, Lord
AUDLEY, Earl of *Castlehaven*, for
Sodomy, and a *Rape*, Anno 1631.
- II. The Proceedings upon the
BILL of DIVORCE, between his
Grace HENRY Duke of *Norfolke*, and
the Lady MARY MORDANT, be-
fore the House of Lords, Anno 1699.
-

L O N D O N :

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THE
CASE of SODOMY,
IN THE
TRYAL
OF

MERVIN Lord AUDLEY,
Earl of Castlehaven.

Who was Try'd and Condemn'd by
his Peers, *April* the 25th, and be-
headed on *Tower-Hill*, *May* the 14th,
1631.

Printed from an Original Manuscript.

The Third Edition.



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T H E
T R Y A L
O F

MERVIN Lord AUDLEY,
Earl of *Castlehaven*, for SODOMY,
&c. April the 25th, 1631.

The Arraignment.



THE Lord Coventry, Lord Keeper of the Great Seal of *England*, was appointed Lord High Steward for that Day, who having Orders for the said Tryal from his Majesty, gave Directions for the same.

The Lords the Peers took their Places about Eight of the Clock in the Morning, and were seated on Benches on each Side of a large Table cover'd with green Cloth, and below them were the Judges plac'd,

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and the King's learned Council, and the Officers of the Court; and having dispos'd of themselves in their several Places, the Lord Steward about Nine of the Clock enter'd the Hall uncover'd, with seven Maces carry'd before him by seven Serjeants at Arms, and was attended upon by Sir *John Burroughs*, Garter-Principal King of Arms, and Mr. *James Maxwell*, Usher of the Black Rod.

After the Lord Steward had saluted all the Lords the Peers, (who saluted him again) he presently ascended the State; and being seated in the Chair, he was presented with his Majesty's Commission, by one of the Masters of the *Chancery*, which bore Date the 13th of *April*, 1631.

After he had receiv'd the said Commission, he commanded an *O Tes* to be made, by one of the Serjeants at Arms, for a general Silence; and then deliver'd the said Commission to Sir *Thomas Fanshaw*, Clerk of the Crown, to be openly read: Which being done, Mr. *Maxwell* kneel'd down, and presented his Lordship with a White-Staff Verge of State, which he gave to one of the Serjeants at Arms, who held the same up by the Cloth of State, on the right Hand thereof; and after the Commission was read, and the Staff receiv'd as afore-said, his Grace commanded a solemn *O Tes* to be made, and then gave Leave to all
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the Lords the Peers, and the Judges, and to all Privy-Councillors there present to be cover'd; and Command was given, that none under that Degree should keep on their Hats, upon Pain of Imprisonment; and then the Peers were severally call'd by their Names, and each of them answer'd particularly, *viz.*

- | | |
|--|----------------------------------|
| 1. <i>Lord Weston, Lord High Treasurer of England.</i> | 12. <i>Earl of Warwick,</i> |
| 2. <i>Earl of Manchester, Lord Privy-Seal</i> | 13. <i>Earl of Carlisle.</i> |
| 3. <i>Earl of Arundel and Surry, Earl-Marshal.</i> | 14. <i>Earl of Holland.</i> |
| 4. <i>Earl of Pembroke and Montgomery, Lord Chamberlain.</i> | 15. <i>Earl of Berks.</i> |
| 5. <i>Earl of Kent.</i> | 16. <i>Earl of Danby.</i> |
| 6. <i>Earl of Worcester.</i> | 17. <i>Viscount Wimbles-ton.</i> |
| 7. <i>Earl of Bedford.</i> | 18. <i>Viscount Conoway.</i> |
| 8. <i>Earl of Essex.</i> | 19. <i>Viscount Dorche-ster.</i> |
| 9. <i>Earl of Dorset.</i> | 20. <i>Viscount Went-worth.</i> |
| 10. <i>Earl of Salisbury.</i> | 21. <i>Lord Percy.</i> |
| 11. <i>Earl of Leicester.</i> | 22. <i>Lord Strange.</i> |
| | 23. <i>Lord Clifford.</i> |
| | 24. <i>Lord Peter.</i> |
| | 25. <i>Lord North.</i> |
| | 26. <i>Lord Goring.</i> |

The Judges present.

Sir Nicholas Hyde, Lord Chief Justice of the King's-Bench.

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<i>Sir Thomas Richardson, Lord Chief Justice of the Common-Pleas.</i>	<i>chequer.</i> <i>Baron Denham.</i> <i>Judge Jones.</i> <i>Judge Hutton.</i>
<i>Sir Humphrey Davenport, Lord Chief Baron of the Ex-</i>	<i>Judge Whitlocke.</i> <i>Judge Crooke.</i>

The King's Council.

<i>Serjeant Crew.</i>	<i>Sir Richard Chelton,</i> <i>Solicitor General.</i> <i>Sir John Finch.</i>
<i>Sir Robert Heath, Attorney General.</i>	

The Officers of the Court.

<i>Sir Thomas Fanshaw, Clerk of the Crown.</i>	<i>Mr. John Keeling,</i> <i>his Deputy or Assistant.</i>
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This done, the Lord Steward, after a solemn Precognizance, commanded the Indictments to be certify'd and brought in; and then, by a Serjeant at Arms, the Lieutenant of the Tower was call'd to bring forth the Prisoner, (who until that Time was kept in a little Room by the *Common-Pleas*) and the Lieutenant brought him to the Bar, with divers of the Guard attending on him, where he had a Place in manner of a Pew, lin'd with Green, in which he stood; and the Lieutenant had another of

The CASE of SODOMY. 7

of the same Form for him to rest in, adjoining to it; and when he had done his Obedience to the Lord High Steward and the Peers, (who all resaluted him again) the Lord High Steward spake to him in the Manner following:

The Lord High Steward's Speech.

My Lord Audley,

THE King hath understood, both by Report and the Verdict of divers Gentlemen of Quality in your own Country, that you stand impeach'd of sundry Crimes of a most high and heinous Nature; and to try whether they be true or not, and that Justice may be done accordingly, his Majesty brings you this Day to your Tryal, doing herein like the mighty King of Kings, in the 18th of *Genesis*, ver. 20, 21. who went down to see whether their Sins were so grievous as the Cry of them. *Because the City of Sodom and Gomorrah is great, and their Sins be grievous, I will go down* (saith the Lord) *and see whether they have done altogether according to the Cry of it.* And Kings on Earth can have no better Pattern to follow than the King of Heaven; and therefore our Sovereign Lord the King, God's Vicegerent here on Earth, hath commanded that you shall be here try'd this Day; and, to that End, hath caus'd these Peers to be

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assembled;

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assembled ; and the Desire of his Majesty, is, that your Tryal shall be as equal as Equity and Justice itself ; and therefore these noble Men your Peers [whose Hearts are as full of Integrity, Justice, and Truth, as their Veins full of noble Blood] are this Day to try you ; wherefore if you be innocent, speak boldly and confidently, and fear not to justify your self, and be assur'd that those that accuse you [if you be free your self] shall not escape free. But if you be guilty of those Crimes, I advise you to give Honour to God and the King, and confess your Fault ; for it is not vain Confidence, nor Subtilty, nor standing out in Denial, that can hide the Truth ; and all Shifts and Subtilties against it are but *Conflia adversus Dominum* ; therefore, if Truth touch you at the Heart, and your Conscience, which is a thousand Witnesses, and God's Grace, which is greater than both, stand not out against it. And if you do, God will put it into the Hearts of these noble Persons to find it out, and to do that which is just.

The Lord Audley's Answer.

May it please your Grace,
I Have been a close Prisoner these six Months, without Friends, without Council or Advice: I am ignorant of Advantages

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ges and Disadvantages of the Law, and am but weak of Speech at the best, and therefore I desire to have the Liberty of having Council to speak for me.

The Lord High Steward's Reply.

FOR your so long Imprisonment, it hath been to you a special Favour; for you have had Time enough to bethink yourself, and more than ever any Man had that hath been committed for such an Offence, and more Favour than ever any had that came to this Bar; and you shall demand nothing which the Law can allow, but you shall have it. But for your Demand, I must move it to the Lords the Judges, and they shall satisfy you in it, or any other Thing you desire.

Then his Grace desir'd to be resolv'd of the Judges, whether this Demand of my Lord Audley, to have a Council to plead for him, might be granted or not?

The Judges answer'd, that in criminal Cases Council is not to admitted for Matter of Fact, but for Matter of Law they may.

Then the Lord Steward proceeded to the Charge, and commanded the three Indictments to be read by Sir Tho. Fanshaw, Clerk of the Crown; two for Sodomy with Lawrence Fitz-

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Patrick his Footman, the third for a Rape committed on his own Wife, the Countess of Castlehaven. Then being ask'd whether he was guilty of them or not guilty? He answer'd, Not guilty.

Then he was ask'd how he would be try'd? The Earl said, By God and my Peers: Whereupon the Peers put off their Hats, and thereupon the Issue was join'd.

The Lord High Steward's Speech to the Lords.

My Lords,

THE Prisoner stands indicted for a Rape by one Indictment, and of Sodomy by two; and he hath pleaded not guilty to them all: It is my Duty to charge you with the Tryal of it, and you are to judge of it.

The Offences wherewith he stands charged, are to be prov'd by Evidence; and because the Crimes that come this Day before us, may in some breed Detestation, and the Person of his Lordship in others may breed Compassion, I desire your Lordships to set these two aside, and let your Reason sway your Judgment, and let that rule your Affections, and your Hearts your Heads; for neither of these ought to be put into the Ballance; for a Grain on either Side may sway the Scale. You are to give
attentive

The CASE of SODOMY. II

attentive Hearing, and then to weigh equally, that the Scale may lean the right Way. The Judges will assist you in the Point of Law, which if you doubt of, you are to expound it to me, and I to them. And this you are to do without corporal Oath; for the Law conceiveth you of such Integrity, that you will do that for Justice which others do upon their Oaths, and therefore admit of no Challenge, and God direct you to do as you ought.

Then Sir Tho. Crew gave the first Charge; and after him Mr. Attorney said as followeth.

My Lord Steward,

MAY it please your Grace, there are three Indictments against *Mervin Lord Audley*; the first for a *Rap*, the other two for *Sodomy*.

The Person is honourable; the Crimes of which he is indicted dishonourable; which, if it fall out to be true, [which is to be left to Tryal] I dare be bold to say, never Poet invented, nor Historian writ of any Deed so foul. And altho' *Suetonius* hath curiously set out the Vices of some of the Emperors who had absolute Power, which might make them fearless of all Manner of Punishment, and besides were Heathens, and knew not God; yet none of these came near this Lord's Crimes. The one is a
Crime,

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Crime, that I may speak it to the Honour of our Nation, is of such Variety, that we seldom or never knew of the like; and for the other, we scarce heard of the like; but they are of such a pestilential Nature, that, if they be not punish'd, they will draw from Heaven a heavy Judgment upon this Kingdom.

Whereupon (Mr. Attorney digressing from the Matter) the Lord Audley would have interrupted him, and requir'd to hold him to the Points in the Indictments. But the Lord High Steward desir'd his Lordship to be patient, and assur'd him he should be heard in fit Time at full. Whereupon Mr. Attorney proceeded again in his Charge as followeth.

May it please your Grace, I can speak it with Joy and Comfort, that during all my Time of Service, both in his Majesty's Father's Time, and since he came to the Crown, I had never the like Occasion to speak in this Place against a Peer of the Realm before now; and God knows I do it now with Sorrow, and I hope I shall never have the like Occasion to do so much again. But his Majesty, who is the Pattern of Vertue, not only as King, but in his Person also; in whom it is hard to judge whether he most excels in Justice or Mercy; (but I rather think in Mercy) for he would have
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my Lord *Audley* (the Prisoner at the Bar) heard with as much Favour as such a Crime can admit; and when he first heard of it, he gave strict Command that the Truth should be search'd out, that his Throne and People might be clear'd from so heavy and heinous Sins; and thereupon he was indicted in his own Country, according to the Law, and by Gentlemen of Worth and Quality. The Bill was found; and now he is personally brought to this Bar, to be try'd by these his honourable Peers, such, of whose Wisdom and Sincerity there can be no Question, but that he shall have a just and honourable Tryal. And first I shall begin with the Indictment of Rape. *Bracton* tells us of King *Athelstane's* Law before the Conquest. *If the Party were of no chaste Life, but a Whore, yet there may be a Ravishment; but it is a good Plea to say she was his Concubine.*

In an Indictment of Rape, there is no Time of Prosecution necessary; for *nullum Tempus occurrit Regi*: But in Case of an Appeal of Rape, if the Woman did not prosecute in convenient Time, it will bar her.

If a Man take away a Maid by Force, and ravish her, and afterwards she give her Consent and marry him, yet it is a Rape.

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For the *Crimen Sodomiticum*, our Law had no Knowledge of it till the 15 *H. 8.* by which *Statute* it was made Felony; and in this there is no more Question, but only whether it be *Crimen Sodomiticum sine Penetratione*; and the Law 15 *Eliz.* sets it down in general Words; and where the Law doth not distinguish, neither must we. And I know you will be cautious how you will give the least Mitigation to so abominable a Sin, which brought such Plagues after it, as we may see in *Gen. 17. Levit. 18. Judg. 19. Rom. 1.* But (my Lord) it seem'd to me strange at the first, how a Nobleman of his Quality should fall to such abominable Sins; but when I found he had given himself over to Lust, and that *Nemo repente fit Pessimus*; and if once Men habit themselves in ill, it is no Marvel if they fall into any Sins; and that he was constant to no Religion, but in the Morning he would be a Papist and go to Mass, and in the Afternoon a Protestant and go to a Sermon. When I had consider'd these Things, I easily conceiv'd, and shall be bold to give your Grace a Reason why he became so ill. He believ'd not God; he had not the Fear of God before his Eyes; he left God, and God left him to his own Wickedness; and then what may not a Man run into? What Sin so foul? What Thing so odious, which he dares not adventure? But I find in him
Things

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Things beyond all Imagination, for I find his ill Imagination and Intentions bent to have his Wife naught with the wickedest Man that ever I heard of before; for who would not have his Wife vertuous and good, how bad soever himself be? And I find him Bawd to his own Wife. If she love him, she must love *Skipwith*; (whom he honour'd above all) and not any honest Love, but in a dishonest Love; and he gives his Reasons by Scripture: *She was now made subject to him*; and therefore if she did Ill at his Command, it was not her Fault but his, and he would answer it. His irregular Bounty toward *Skipwith* was also remarkable. He lets this *Skipwith* (whom he calls his Favourite) spend of his Purse 500 l. per Annum; and if his Wife or Daughter would have any Thing, tho' never so necessary, they must lie with *Skipwith*, and have it from him, and not otherwise; also telling *Skipwith* and his Daughter-in-Law, he had rather have a Child by him than any other. But for these Things, I had rather they should come forth of the Witnesses Mouths than from me; and thereupon desir'd that the Proof might be read.

The Deposition of Walter Bigg.

Walter Bigg depos'd that *Amptil* was a Page to Sir *H. Smith*, and had no more

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more Means when he came to my Lord *Audley*, but the Mare he rode on. He entertain'd him as his Page eight Years, and afterwards let him keep Horses in my Lord's Grounds, by which I think he enrich'd himself 2000 *l.* but he never sat at Table with my Lord 'till he had marry'd his Daughter, and then gave him to the Value of 7000 *l.*

That *Skipwith* was sent from *Ireland* to be my Lady's Page; and that his Father and Mother were very poor Folks there. He spent of my Lord's Purse *per Annum* 500 *l.* and he gave him at one Time 1000 *l.* and hath made divers Deeds of Land unto him.

My Lord was at first a Protestant; but after, by buying of *Fountbill*, he turn'd his Religion.

That *Henry Skipwith* had no Means when he came to him, and that he had given him 1000 *l.* and that *Skipwith* lay with him when he was straiten'd in Rooms; and that he gave a Farm of 100 *l. per Annum* to *Amptil* that marry'd his Daughter, and at other Times to the Value of 7000 *l.* and that there was one *Blandina* in his House fourteen Days, and bestow'd an ill Disease there, and therefore he sent her away.

The Lord Audley's Examination, taken before the Lord Keeper, Lord Treasurer, Lord Marshal, and others; which, being shew'd to him, subscrib'd with his own Hand, he would not acknowledge, but excus'd it, saying his Eyes were bad; but being perfectly read, he acknowledg'd it.

The Lord-Steward's Advice to my Lord Audley.

My Lord,

I Would advise you not to deny the things which are clearly prov'd; for then the Lords will give less Credit to the rest you say.

The Countess of Castlehaven's Examination.

That shortly after the Earl marry'd her, viz. the first or second Night, *Amptil* came unto the Bed's-Side, whilst she and her Husband were in Bed, and the Lord *Audley* spake lasciviously to her, and told her, that now her Body was his, and that if she lov'd him she must love *Amptil*; and that if she lay with any other Man, with his Consent, it was not her Fault but his; and that if it was his Will to have it so, she must obey, and do it.

That he attempted to draw her to lie with his Servant *Skipwith*; and that *Skipwith* made him believe he did it, but did it not.

That

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That he would make *Skipwith* come naked into his Chamber, and delighted in calling up his Servants to shew their Privities, and would make her look on, and commended those that had the largest.

That one Night, being a Bed with her at *Fountbill*, he call'd for his Man *Brodway*, and commanded him to lie at his Bed's-Feet; and about Midnight (she being asleep) call'd him to light a Pipe of Tobacco; *Brodway* rose in his Shirt, and my Lord pull'd him into Bed to him and her, and made him lie next to her; and *Brodway* lay with her, and knew her carnally, whilst she made Resistance, and the Lord held both her Hands, and one of her Legs the while; and that as soon as she was free, she would have kill'd herself with a Knife, but that *Brodway* forceably took the Knife from her, and broke it; and before that Act of *Brodway* she had never done it.

That he delighted to see the Act done; and made *Skipwith* to come into Bed with them, and lie with her whilst he might see it, and she cry'd out to have sav'd herself.

Then Lawrence Fitz-Patrick was produc'd, but before his Examination was read, the Earl desir'd that neither he, nor any other, might be allow'd Witnesses against him, until he had taken the Oath of Allegiance. This was refer'd to the Lords the Judges.

The

The CASE of SODOMY. 19

The Judges resolve against him, that they might be Witnesses, unless they were convicted Recusants,

The Examination of Fitz-Patrick was then read, the Truth of which he then again confirm'd upon Oath.

THat the Earl had committed *Sodomy* twice upon his Person; that *Henry Skipwith* was the special Favourite of my Lord *Audley*, and that he usually lay with him; and that *Skipwith* said, that the Lord *Audley* made him lie with his own Lady; and that he usually made him lie with the young Lady; and that he saw *Skipwith* in his Sight do it, my Lord being present; and that he lay with *Blandina* in his Sight, and four more of the Servants, and afterwards the Earl himself lay with her in their Sights.

Then Skipwith was produc'd and sworn, and his Examination read, which he again confirm'd upon Oath, and deposeth, viz.

THat the Earl often solicited him to lie with the young Lady, and persuaded her to love him; and to draw her thereunto, he urg'd that his Son lov'd her not; and that in the End he usually lay with the young Lady, and that there was Love
between

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between them both before and after; and that my Lord said, he would rather have a Boy of his begetting than any others; and that she was but twelve Years of Age when he first lay with her, and that he could not enter her Body without Art; and that the Lord *Audley* fetch'd Oil to open her Body, but she cry'd out, and he could not enter; and then the Earl appointed Oil the second Time, and then *Skipwith* enter'd her Body, and knew her carnally; and that my Lord made him lie with his own Lady, but he knew her not, but told his Lord he did.

That he spent 500 *l. per Annum* of the Lord's Purse, and, for the most Part, he lay with the said Earl.

That the Earl gave him his House at *Salisbury*, and a Manour of 600 *l. per Annum*.

That *Blandina* lay in the Earl's House half a Year, and was a common Whore.

Fitz-Patrick's second Examination.

THat the Lord *Audley* made him lie with him at *Fountbill*, and at *Salisbury*, and once in the Bed, and emitted between his Thighs, but did not penetrate his Body; and that he heard he did so with others.

That *Skipwith* lay with the young Lady often, and ordinarily; and that the Earl knew it, and encourag'd him in it, and wish'd

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wish'd to have a Boy by him and the young Lady.

That *Blandina* liv'd half a Year in my Lord's House, and was a common Whore.

Edmund Scott's Examination.

HE deposeth, that *Skipwith* frequently knew the young Lady, and that the Earl knew it, and encourag'd him therein.

Fry's Examination.

THAT *Henry Skipwith* and the young Lady lay often together, and the Earl in Company, and that then the Earl protested, that he would fain have a Boy of his begetting.

Then was read the young Lady Audley's Examination.

THAT she was marry'd to her Husband by a *Romish* Priest in the Morning, and at Night by a Prebend at *Kilkenny*. That she was first tempted to lie with *Skipwith* by the Earl's Allurements; and that she had no Means but what she had from *Skipwith*; but she would not lie with *Pawlet*; he sollicitated her also to lie with one *Green*.

That

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That the Earl himself saw her and *Skipwith* lie together divers times; and Nine Servants of the House had also seen it.

When the Earl solicited her first, he said, that upon his Knowledge her Husband lov'd her not; and threaten'd that he would turn her out of Doors, if she did not lie with *Skipwith*; and that if she did not, he would tell her Husband she did.

That she being very young, he us'd Oyl to enter her Body first; and afterwards he usually lay with her, and it was with the Earl's Privity and Consent.

Brodway's Examination, who confesseth,

THAT he lay at the Earl's Bed's Feet, and one Night the Earl call'd to him for Tobacco; and as he brought it in his Shirt, he caught hold of him, and bid him come to Bed, which he refus'd; but to satisfy my Lord, at last he consented, and came into the Bed on my Lord's Side; then my Lord turn'd him upon his Wife, and bid him lie with her, which he did; and the Earl held one of her Legs and both her Hands, and at the last (notwithstanding her Resistance) lay with her.

That the Earl us'd his Body as the Body of a Woman, but never pierc'd it, only emitted between his Thighs.

He

The CASE of SODOMY. 23

He hath seen *Skipwith* lie with the young Lady in Bed together; and when he had got upon her, the Earl stood by and encouraged him to get her with Child; and that he hath made him the said *Brodway* kiss his own Lady, and often solicited him to lie with her, telling him, that he himself should not live long, and that it might be his making; and that he hath said the like to *Skipwith*.

The Countess's second Examination.

THat one Night the Earl lying in Bed with her at *Founthill*, he call'd for his Man *Brodway*, and commanded him to lie at his Bed's Feet, and about Midnight (she being asleep) call'd to him to light him a Pipe of Tobacco. *Brodway* rose in his Shirt, and the Earl pull'd him into Bed to him and her, and made him lie next to her, and *Brodway* lay with her, and knew her carnally, whilst she made Resistance, and the Earl held both her Hands and one of her Legs the whilst; whereupon, as soon as she was free, she would have kill'd herself with a Knife, but that *Brodway* forcibly took the Knife from her and broke it; and before that Act of *Brodway* she had never done it.

That the Lord delighted to see the Act done, and made him come into Bed to them,

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them, and lie with her whilst he might see it, and she cry'd out to have sav'd herself.

The Earl's second Examination.

THE Earl desir'd to be pardon'd of those Things whereof he must accuse himself, and said, *That Condemnation should not come out of his own Mouth.*

These Testimonies being read, Mr. Attorney press'd Things very earnestly, and in excellent Method against the Earl, and said,

My Lords,

YOU have seen the Clearness of the Proofs, and I know your Wisdoms to be such, (as you well know) in so dark a Business clearer Proofs cannot possibly be had; for let a Man be never so wicked, or never so impudent, he will not call Witnesses to see his Wickedness, yet you see here this Point fully prov'd.

Then he shew'd how both the Laws of God and Man be against Sodomy, and cited *Levit. 18.* towards the End, *That by these Abominations the Land is defil'd; and therefore the Lord doth visit this Land for the Iniquity thereof.* And then concludes, that God may remove and take away from us his Plagues.

Let

Let this wicked Man (saith he) be taken away from amongst us.

Then the Earl [*after the Lord Steward had told him that he should be heard in his own Defence, with as much Patience as was admitted in his Charge*] enter'd into his own Defence. But the Lord Steward advis'd him to speak pertinently; whereupon he alledg'd, that he was a weak Man, and of ill Memory, and therefore desir'd that he might not be interrupted.

I. Then he began his Defence with Exceptions against his Wife, urging, that she was naught and dishonest with *Brodway*, by her own Confession.

Whereunto the Lord Steward answer'd, *That this made against his Lordship; therefore he ought not to alledge for his Defence that Fact, as an Imputation to his Wife, which he forc'd her unto by Compulsion and Violence.*

II. Then he objected against the Incompetency of the Witnesses, as the one his Wife, the other his Servants; and they drawn to this by his Son's Practice, who sought his Life; and he desir'd to know, if there were not a Statute against the Incompetency of Witnesses?

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The Judges resolv'd him, that there was none touching Witnesses; but in Cases of High Treason, there was a Statute concerning Accusers.

III. Then he desir'd to be resolv'd, whether, because *Brodway* doth not depose any Penetration, but only that he emitted upon her Belly while the Earl held her, that should be judg'd Felony as for a Rape?

The Judges resolv'd it to be a Rape, and so consequently to be Felony.

IV. Then he desir'd to be resolv'd, whether his Wife is to be allow'd a competent Witness against him, or not?

The Judges resolve, that in Civil Cases the Wife may not; but in a Criminal Cause of this Nature, where the Wife is the Party griev'd, and on whom the Crime is committed, she is to be admitted a Witness against her Husband.

Then the Lord High Steward desir'd the Lords the Judges to resolve the Questions which Mr. Attorney in his Charge submitted and referr'd to their Judgments.

I. Whether it were to be accounted Buggery within the Statute, without Penetration?

The

The Judges resolve, that it was; and that the Use of the Body, so far as to emit thereupon, makes it so.

2. Whether, it being prov'd that the Party ravish'd were of evil Fame, and of an unchast Life, it will amount to a Rape?

The Judges resolve it to be a Rape, though committed on the Body of a common Strumpet; for it is the Inforcing against the Will which makes the Rape; and a common Whore may be ravish'd against her Will, and it is Felony to do it.

3. Whether it is adjudg'd a Rape, when the Woman complaineth not presently? And whether there be a Necessity of Accusation within a convenient Time, as within 24 Hours?

The Judges resolve, That in as much as she was forc'd against her Will, and then shew'd her Dislike, she was not limited to any Time for her Complaint; and that in an Indictment, there is no Limitation of Time, but in an Appeal there is.

4. Whether Men of no Worth shall be allow'd sufficient Proofs against a Baron or not?

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The Judges resolve, that any Man is a sufficient Witness in Case of Felony.

Then the Lord Steward spake, and said,

My Lord,
YOU have been graciously dealt with in this Proceeding; for it is not an usual Thing in so capital and heinous Causes as this, to bring the Party and Witnesses Face to Face before T^{ry}al; but [my Lord] you have long before this Time heard their Examinations, and question'd and oppos'd them Face to Face; and are thereby the better enabled to make your Defence; and his Majesty is still graciously pleas'd to continue his Goodness towards you, and hath commanded that you should be heard at full: If therefore you have any Thing else to say for your self, speak it.

Whereupon the Earl answer'd, (having first made a solemn Protestation of his Innocency, but nevertheless implor'd the Mercy of God and the King.)

THAT he had nothing more to say, but left himself to God and his Peers, and then presented to their Considerations three Woes.

1. *Woe to that Man, whose Wife should be a Witness against him!*

2. *Woe*

2. *Woe* to that Man, whose Son should persecute him, and conspire his Death!
3. *Woe* to that Man, whose Servants should be allow'd Witnesses to take away his Life!

And he willed the Lords to take this into their Consideration; for it might be some of their Cases, or the Case of any Gentleman of Worth, that keeps a Footman, or other, whose Wife is weary of her Husband, or his Son arriv'd to full Age, that would draw his Servants to conspire his Father's Death.

He said farther, his Wife had been naught in his Absence, and had had a Child, which he conceal'd to save her Honour.

That his Son was now become 21 Years old, and he himself old and decay'd; and the one would have his Lands, and the other a young Husband; and therefore, by the Testimony of them, and their Servants added to their own, they had plotted and conspir'd his Destruction and Death,

And then [being thereunto requir'd by the Lord Steward] he withdrew himself from the Bar.

Then the Lord Steward [after solemn Proclamation of Silence] address'd himself to the Lords, and said,

My Lords the Peers,

Your Lordships have heard the Proofs, the Prisoner's Defence, all his Doubts and Questions resolv'd by the Lords the Judges; and therefore your Lordships [if you please] may withdraw your selves, if you are satisfy'd; because the Prisoner is not call'd to the Bar again until your Lordships are agreed upon the Verdict.

Then the Peers withdrew themselves; and after two Hours Debate, and several Advices and Conferences with the Lord Chief Justice, whom they sent for, and consulted with four several Times; having in that Time also sent the Earl of *Warwick*, and Viscount *Dorchester*, together with the Lord Chief Justice, to consult with the Lord Steward; at the last they return'd to their Places; and then the Lord Steward ask'd them one by one, beginning at the lowest, and so ascending.

1. Whether the Earl of *Castlehaven* was guilty of the *Rape* whereof he stood indicted, or not? And they all gave him guilty.

2. Whether the said Earl of *Castlehaven* was guilty of the *Sodomy* with which he was charg'd, or not? And fifteen of the Lords condemn'd him, and the other eleven freed him.

When

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When the Verdict was thus given, the Lieutenant of the *Tower* was again commanded to bring the Prisoner to the Bar, to hear his Sentence; and after he was brought, the Lord Steward said unto him:

“ Forasmuch as thou, *Mervin*, Lord *Audley*, Earl of *Castlehaven*, hast been indicted for divers Felonies, by three several Indictments; one for a *Rape*, the other two for *Sodomy*, and hast pleaded *not guilty* to them all, and for thy Tryal hast put thy self upon God and thy Peers; which Tryal thou hast had, and they found thee guilty of them all: What canst thou say for thy self, why the Sentence of Death should not be pronounc’d against thee? Whereunto he answer’d, He could say no more, but referr’d himself to God and the King’s Mercy.

Then the Lord Steward said, “ My Heart grieveth for that which my Tongue must utter; but Justice is the Way to cut off Wickedness, and therefore hear thy Sentence.

THOU must go from hence to the Prison from whence thou camest, and from thence to the Place of Execution, there to be hang’d by the Neck ’till thou be dead, and the Lord have Mercy on thy Soul.

The Lord Steward's Exhortation.

“ **O**H think upon your Offences ! which
“ are so heinous and so horrible, that
“ a Christian Man ought scarce to name
“ them, and such as the deprav'd Nature
“ of Man [which of it self carries a Man
“ to all Sin] abhorreth ! And you have
“ not only offended against Nature, but
“ the Rage of a Man's Jealousy ! And al-
“ tho' you die not for that, that you have
“ abus'd your own Daughter ! And having
“ both Honour and Fortune to leave be-
“ hind you, you would have had the im-
“ pious and spurious Off-spring of a Harlot
“ to inherit ! Both these are horrid Crimes.
“ But, my Lord, it grieves me to see you
“ stand out against the Truth so apparent ;
“ and therefore I will conclude with this
“ Admonition, That God might have ta-
“ ken you away when you were blinded
“ in your Sins, and therefore hope he hath
“ reserv'd you as a Subject of his Mercy ;
“ and as he sends you to see this Day of
“ Shame, that you may return unto him,
“ so thereby in a Manner he lovingly
“ draws you to him ; therefore spend the
“ Remainder of your Time in *Tears* and
“ *Repentance* ; and this Day's Work, I hope,
“ will be a Correction from many Crimes
“ and Corruptions.

Whereupon,

Whereupon, at last, the Earl descended to a low Petition to the Lords, and very humbly beought them to interceed with his *Majesty* that he might not die, but be banish'd; or, at least, that his *Majesty* would not suddenly cut him off, but give him Time of Repentance. And then he desir'd their Lordships Pardons, in that he had been so great a Stain to Honour and Nobility.

Then a Proclamation being made by a Serjeant, declaring, that the Lord High Steward's Pleasure, was, that all such as had attended this Days Service might depart; and then the Lieutenant of the Tower carry'd the Earl away, and so the Court broke up.

Here followeth the Articles of the Earl's Belief, sent in a Letter to his Son.

Son Audley,

GOD gave you Life and Soul, and appointed me an Instrument to be your Father, wherein I have a double Charge to take Care of, [your Body] wherein my Part lieth, you being Bone of my Bone, and Flesh of my Flesh; and likewise to preserve that precious Treasure, which God has infus'd in you, and you and I are especially to care for, and for which you must give an Account of before the Tribunal of the Divine Majesty, [your Soul.] It is here in

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this World tofs'd with many and sundry Winds; therefore it must be your Care to coast it into some secure Harbour, where it may be anchor'd with an irremoveable Faith. And because your Youth shall be better instructed in the Rules of that Truth, that shall keep the Ship of your Soul steady, I have sent you under my Hand my Belief, wishing you to follow the same, For if you look into Scripture, the Holy Wit of the sacred Spirit, you shall find the Danger of being tofs'd with every Wind; wherefore fill not your Sail with the Blasts of Pride, which are caus'd by Self-conceit and curious Questions. Read the Scriptures, and observe them. Obey God's Laws, and the Laws of his Substitute, our most wise and religious King; then you are come from Billows to a quiet full Sea; by which Means, [no Question] you may attain the blessed Sight of our Saviour after this Life, and in this Pilgrimage go on with much Patience and Security.

God blefs you.

Tower, May 1,
1631.

Your Father,

Castlehaven.

The Articles of the Earl's Belief.

IN the Name of God. *Amen.*
I, Mervin, Lord Audley, Earl of Castlehaven [being in very good Strength and Memory,

Memory, Thanks be given to Almighty God] having been branded, and openly accus'd for Change, Alteration, and Doubtfulness of my Faith and Religion, thought it fit [like a Christian] to give Satisfaction upon what Ground I stand for my Belief, and to express under my own Hand the same, for the Satisfaction of all charitable People and Christian Men.

1. I do believe in the glorious and blessed Trinity, three Persons and one God, eternal and ever-living, God the Father, God the Son, and God the Holy Ghost.

2. I do rely wholly upon the Merits, Death, and Passion of our blessed Saviour *Christ Jesus*, and upon his Mediation for the Remission of my Sins.

3. I do believe, and use with most humble Reverence, the *Lord's Prayer*, the *Creed of the Apostles*, and the *Ten Commandments*, as they are allow'd of, and set down in the *Church of England*.

4. I do believe the *Canonical Scriptures*, and that they are written by the *Inspiration* of the *Holy Spirit*.

5. I do believe the *Book of Common-Prayer*, allow'd in the *Church of England*, to be an excellent Form in the Service of God, and for that Purpose use the same.

6. For the rest of my *Belief*, I do refer it to the true Orthodox Faith of the *Church of England*.

7. And

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7. And for the *Articles* receiv'd at this present in the *Church of England*, and confirm'd by the *Authority of Parliament*, I differ not in any Point; renouncing all Superstitions and Errors taught and believ'd in the *Church of Rome*, or in any other Church; in which Faith I will continue (God willing) to my Life's End. In Testimony whereof, I to the Original subscribe my Hand.

CASTLEHAVEN.

A LETTER sent by the Earl to his four Sisters.

Dear Sisters,

GOD hath given, and God hath taken away; blessed be the Name of the Lord, who hath redeem'd my Soul from Misery, and open'd mine Eyes to see my Sins against him. Dear Sisters, the Shortness of my Time is such, that I cannot particularly write to you all; but know ye all, to your Comforts, the great and infinite Favour that the blessed Trinity, Three Persons and One God, hath bestow'd upon me, though the Sufferings of my Saviour Jesus Christ, upon whose Merits and Supplications I wholly build, and find a Rock of Faith to cleave unto. In my whole Life, (I thank God) in all my Sins, which were infinite before the Divine Majesty, I never took so much Comfort, as I do in this which the World calls Misery and Affliction.

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Affliction. For when I have drawn my Cogitations together, by what Means I should scorn and condemn the World, I can think upon none but this present Blessing bestow'd upon me. God hath given me Tears with Peter, and I doubt not but, by the Assurance of the most glorious Spirit, shortly to be where that blessed Man had his Tears remunerated with Salvation. The God of Heaven bless you all, and send you his Holy Spirit, that you may turn to him, and serve him with true, contrite, and sorrowful Hearts; so shall you, at the End of your tedious Journey, find a happy Repose with the great Lord of Lords, that hath bestow'd this Blessing upon your late most unfortunate Brother. I thank Almighty God, that from the first of my Troubles I laid my self and all earthly Things at the Feet of the Giver, and have not [blessed be his holy Name] repin'd at any Thing that it has pleas'd him to lay upon me; but I have gone on cheerfully and humbly, [God be blessed.] And I pray God bless you all. Pray for me; for you know the Devil will be busy. God send your Souls to have the Vision of my Saviour.

Fare you well.

What Title I may give myself I know not, but a Christian sure I am.

Your dear Brother,

MERVIN.

Subscrib'd,

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Subscrib'd,

*To the Right Honourable my dear Sisters, the
Lady Anne B——, the Lady Elizabeth
G——, the Lady Christian M——, the
Lady Eleanor D——, or to any of them.*

Thursday the 14th of May 1631, was appointed for the Earl's Execution, who [altho' sentenc'd to be hang'd, yet, by Reason of his noble Extraction and the King's Favour, was permitted to be beheaded] about Nine of the Clock in the Morning, attended by the Lieutenant of the Tower. Dr. Winniff, Dean of St. Paul's, and Dr. Wickham, the King's Chaplain, the Warders of the Tower, and twelve of his own Men carrying a black Velvet Coffin before him, he ascended the Scaffold on Tower-hill, and there tarry'd half an Hour in private Conference with the Doctors; and after pulling off his Hat, and bowing himself to the People, he said, I know that [being brought to this Place where I am to end the Remainder of my ill-spent Days] all here present do expect that I should here say somewhat; but, in Regard of my Age, and the Weakness of my Memory, caus'd by this my long Affliction of Imprisonment, I hope you will excuse me from making any long Speech; therefore what I shall speak, shall be but in brief. And then with a bold Courage and loud Voice he said,

“ I do

“ I Do confess that God Almighty hath
“ been a most gracious God unto me, in
“ bestowing upon me many and great Blessings,
“ which have been most wickedly
“ abus’d by me. He hath given me Titles,
“ nay, he hath given me Honour too; but,
“ with Sorrow I speak it, I have not made
“ that good Use of them, that I should
“ and might have done, for which I most
“ earnestly ask Pardon at his gracious
“ Hands.

“ The King’s Majesty, my Sovereign,
“ hath likewise shew’d very much and
“ great Favour towards me, in giving me
“ an honourable Tryal by my Peers, in
“ giving me a long and large Time of Repentance;
“ in which Time, I hope, by
“ my true Humiliation and Sorrow for my
“ Sins, I have made my Reconciliation
“ with God; as also, which is not the least,
“ for which I most heartily thank his Majesty,
“ that he hath sent me these two
“ Doctors, worthy Divines, for the instructing
“ and comforting me for the Good of
“ my Soul, of whom I have receiv’d the
“ Sacrament three Times. I beseech Almighty
“ God to bless his Majesty, his
“ Royal Queen, and hopeful Issue Prince
“ Charles; and grant that there may never
“ lack one of his Royal Race to succeed
“ him in these Kingdoms.

“ I do

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“ I do confess, that my Sins have been
 “ many and great, and such as have de-
 “ serv'd Death ; but for these two great
 “ Crimes laid to my Charge amongst the
 “ rest, I call God to witness, [in whose
 “ Presence I now stand] I am innocent
 “ from them, and not guilty of them. Yet
 “ nevertheless, I confess, I have deserv'd
 “ Death, and to that End I am brought
 “ hither, which God in his Mercy enable
 “ me to undergo. And whereas, at my
 “ Tryal, there was some Questions made
 “ of my Religion ; I do confess that herein
 “ I have been too negligent, and have too
 “ much externally favour'd Popery and
 “ Superstition ; but, in my Judgment and
 “ Opinion, I have always held the Pro-
 “ testant Religion, and the Tenets of the
 “ Church of *England*, howsoever outward-
 “ ly I have too much favour'd Popery ;
 “ which God of his infinite Mercy, for his
 “ Son my Saviour's Sake, pardon and for-
 “ give me.

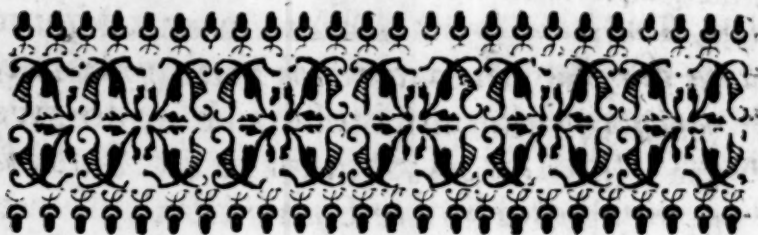
Then he held out a Piece of Paper, and
 said, “ I have here with my own Hand
 “ set down the Articles which I have al-
 “ ways believ'd, and will now die in ;
 “ which, by Reason of the Weakness of
 “ my Sight I am not able to read myself,
 “ therefore I desire that they may be read.
 And then they were openly read with a
 loud Voice, [being the same Articles afore-
 said

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said which he sent to his Son.] After which, he said, " I have nothing more " to say, but to intreat all these good People here, and all the World, to forgive " me ; for I do forgive all the World. And " as for those who were the Cause of my " bringing hither, I do as heartily forgive " them, as I do desire God to forgive me.

Then he bow'd himself, and went to the Middle of the Scaffold, kneeling down, and lifting up his Hands and Eyes to Heaven, [each Doctor kneeling on either Side of him] he pray'd to God ; which Prayer being ended, [after some Conference with the Doctors, and with divers on the Scaffold] with a smiling Countenance he took his Leave of all Men, and desir'd their Prayers to Almighty God for him ; and then he prepar'd himself to die, pulling off his Hat, Band, and Doublet ; and then tying a Handkerchief about his Face, most willingly and patiently laid down his Body, submitting himself to the Power of the Executioner, who with one small Blow sever'd his Head from his Body, which was receiv'd by his Servants in a Scarlet Cloth, and put into a red Silk Bag, and, with his Body put into his Coffin, and so carry'd into the *Tower*, where it was bury'd in a Grave, which he himself saw made for him in the Morning.

The



*The TRYAL, Conviction, Con-
demnation, Confession and Execution
of L. Fitz-Patrick and T. Brodway,
two Servants of the late Earl of Ca-
stlehaven. Together with the Coun-
tess's Examination at the King's Bench
Bar.*



ON Monday the 27th of June,
1631, the Marshal of the
King's Bench brought Fitz-
Patrick and Brodway to the
Bar, where was a Jury of suf-
ficient and able *Wiltshire* Men,
impanell'd to go upon and try them.

The Countess of *Castlehaven* herself was in
Court, to give Evidence against *Brodway*;
and she came in upon the Instant, when the
Lord Chief Justice demanded of her, whe-
ther the Evidence she had formerly given
at her Lord's Arraignment were true, and
the full Matter of Charge she had then to
deliver against the Prisoner? Whereunto
she

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she answer'd it was. My Lord said, *Madam, You have sworn that Brodway, Prisoner at the Bar, hath lain with you by Force, which may be, and yet no Act committed; Did he enter your Body?* She said, *That in her former Oath taken, when she testify'd he lay with her by Force, her Meaning was that he had known her carnally, and that he did enter her Body.* Then was she wished to look on the Prisoner; unto which Motion and Commandment she made a short Reply, *That although she could not look on him, but with a Kind of Indignation, and with Shame, in regard of that which had been offer'd unto her, and she suffer'd by him, yet she had so much Charity in her, and such Respect to God and his Truth, that she had deliver'd nothing for Malice, and therefore hop'd that her Oath and Evidence thereupon should be credited; and so desir'd to be believed and dismiss'd; which being granted, she departed with as much Privacy as might be into her Coach.*

Fitz-Patrick being ask'd concerning his Guiltiness or Innocency, demanded who were his Accusers. The Lord Chief Justice answer'd, *you have accus'd yourself sufficiently.* *Fitz-Patrick* reply'd, *That he thought neither the Laws of the Kingdom requir'd, nor was he bound to be the Destruction of himself; what Evidence he had formerly given, was for the King against the Earl, and no farther.*

The

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The Lord Chief-Justice reply'd, *It was true, the Law did not oblige any Man to be his own Accuser ; yet where his Testimony serv'd to take away any one's Life, and made himself guilty of the same Crime, therein it should serve to cut him off also.*

Then the Jury demanded of the Court Satisfaction concerning the Words of the Statute, which run, *to charge him alone to be, and accounted a Felon in Law, that committed a Buggery with Man or Beast.* [For which Fact the late Earl was only guilty, and had suffer'd.]

The Lord Chief Justice reply'd, *That forasmuch as every Accessary to a Felony is a Felon in Law ; so he being a voluntary Prostitute, when he was not only of Understanding and Years to know the Heinousness of the Sin, but also of Strength to have withstood his Lord, he therefore was so far forth guilty.*

Whereupon the Jury found the Bill, and the Sentence of Death was pass'd on them both ; and they were deliver'd and committed to the Sheriff of *Middlesex*, who, after he had suffer'd them to have some Repast at *Mr. Hill's* in the *Palace-Yard*, and Conference with their Friends, carry'd them to *Newgate*, where they behav'd themselves civilly and religiously.

On *Wednesday*, the 6th of *July*, they were brought to *Tyburn* in two several Carts, *Fitz-Patrick* first, and set under the Beam

to

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towards *Paddington*, appropriated [as is said] to, and chosen by *Romanists*; where, when the Executioner had ty'd the Halter about his Neck, he thus deliver'd himself:

GENTLEMEN,

“ FOrasmuch, as I am here, and, as it
“ were, upon the Instant to suffer
“ Death, I desire all loving Subjects and
“ Members of the Church of *Rome*, to
“ pray for me. [*When no Man, for any*
“ *thing could be perceiv'd, rejoicing at that*
“ *Motion, or signifying a Willingness so to do,*
“ *he proceeded to a kind of Prayer to our Savi-*
“ *our, his Mother, and the Saints; in which*
“ *he was presently interrupted by some Gentle-*
“ *men standing on that North Side, who told*
“ *him, that the Beginning of his Prayer was*
“ *good, for that he offer'd it to Christ Jesus,*
“ *in whom only Salvation is to be found; as*
“ *for the Virgin Mary, and the Saints, they*
“ *could do him no good. But notwithstanding*
“ *that, he persisted, saying,*] O yes, the Blef-
“ fed Virgin never forlook or fail'd any
“ that trusted in or call'd upon her; and
“ therefore he would depend upon her and
“ the rest of the Saints; and so proceeded
“ to an Exhortation to *Mr. Brodway*, to
“ cleave to the same Opinion, and die in
“ the *Romish* Faith; for which to have
him

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“ him do, *he said*, if he had it, he would
 “ give the whole World. *Unto which Mo-*
 “ *tion* Brodway gave no Answer, or seem'd not
 “ to regard it. Then he proceeded with Relati-
 “ on how he had been examin'd by my
 “ Lord Chief-Justice, touching the Corrupt-
 “ ness of my Lord of *Castlehaven's* Life,
 “ wherein he no ways confess'd any thing
 “ to prejudice the said Earl.

“ That being within three Days after
 “ sent for before the Lords of the Council,
 “ my Lord *Dorset* [against whom he did
 “ once or twice envy, yet freely forgave
 “ him] had intrapp'd and ensnar'd him to
 “ his Destruction; for that saying upon
 “ his Honour, and speaking it in the Plu-
 “ ral Number [as the Mouth of the whole
 “ Board] that whatsoever he deliver'd
 “ should no ways prejudice himself; he
 “ thereby got him to declare the Earl
 “ guilty of the Sin of Buggery; wherein
 “ himself being a Party, was the only
 “ Cause he came now to suffer Death; for
 “ which his Lordship's Skill and Policy in
 “ sisting him, together with Dispensation
 “ of his Promise and Oath, he freely for-
 “ gave him; saying farther, the said Lord
 “ had done him no Wrong, because he
 “ therein was but an Instrument to send
 “ him out of this World into a better.
 “ Then he proceeded to a Kind of a De-
 “ mand

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“mand of the Company, or rather a Re-
“hearsal of the Earl’s denying the Sin at
“his Death; touching which he desir’d
“and wish’d my Lord had not so spoken,
“[if he did] for it was too true; his Lord-
“ship had both bugger’d him, and he his
“Lordship. That it was true [for some
“private Discontentment] he bore a little
“Malice to the Earl and *Skipwith*, for
“which he ask’d God Forgiveness. That
“*Brodway*, if he had done any Thing to
“the Countess, he did it not out of his
“own ill or corrupt Nature, but was pro-
“vok’d and perswaded to it by the Earl.

“He clear’d the young Lord, as never
“being any Occasion or Means of his Fa-
“ther’s Death, in hiring or persuading
“him to give Evidence, as he had done.
“He confess’d he had liv’d an ill Life, in
“that he had delighted in Drinking, Who-
“ring, and all manner of Uncleanneſs;
“but now, as he was heartily sorry, so he
“doubted not of Mercy of Almighty God,
“to pardon and forgive him all his Sins,
“through and for the Merits and Media-
“tion-Sake of *Christ Jesus*, the Blessed Vir-
“gin, and the Saints in Heaven.

“That he had fallen or run into these
“erroneous Sins, and especially that which
“he came to die for, in Regard and by
“Reason he had neglected, and not so du-
“ly, as he should have done, repair’d to his
“Ghostly

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“ Ghostly Father, to make Confession, and
 “ take Instructions from him. That after
 “ he did make Confession, and his Sins
 “ known to the Priest, he was not only
 “ sorry for them, but also resolv’d never
 “ to come into my Lord’s House again;
 “ yet true it was he did; but it was thro’
 “ Frailty, and because he was not furni-
 “ shed of another Place.

So turning again to Mr. *Brodway*, and persuading him to embrace the *Romish* Faith, wherein, as he perceiv’d his Labour was in vain, so the Sheriff and other Persons of Quality willed him to forbear, and shut up his Discourse, unless he had any thing more to say to the Purpose. Whereupon, praying for the King, Queen and State, he betook himself to private Prayer, and therein for the most part continu’d to his Death.

Mr. *Brodway* came, [and as it was thought by the Company, a true Penitent] and after fetching a deep Sigh at the Sight of the Tree, he lifted up his Eyes and Hands towards Heaven, making and saying to himself two short Prayers; so attending *Fitz-Patrick’s* Discourse, he sate in private Meditation, often making it manifest he was in Prayer most of the Time, and also rejoicing at the Assembly’s well wishing of him,
 for

for which he return'd (tho feign'd) Smiles and Thanks. His Time being come to stand up, and have the Halter put about his Neck, and so to declare himself, he willingly suffer'd the one, and proceeded to the other. First asking *Fitz-Patrick* if he had done, he pull'd a Sheet of Paper out of his Pocket; which being writ broadways, he could not spread it to read, therefore desir'd to have his Hands unty'd, which was done, and he read it distinctly to the Assembly; the Effect whereof, was, to declare himself guilty, in the Sight of Almighty God, of Death and Damnation; for that he had broke all the Commandments, in Thought, Word, and Deed, and sinn'd in Pride of Life, Lust of the Eye, Conceit of his own Beauty, matchless Strength, and other natural Gifts, in Desire of Revenge, not pitying the Poor, unlawful Riches, not repairing to Sermons, not observing the Sabbath, &c. For all which and other his Sins whatsoever, he both desir'd of, and trusted in God for Pardon, and that through and for the only Merits of our Saviour *Christ Jesus*, his bitter Death and Passion. He express'd a strong Assurance, which his very Soul had, of Forgiveness, in that, through the Assistance of the Holy Ghost, he had laid such Hold on Christ as he had done. This Paper-writing contain'd his Confession

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and Prayer; also [as I remember] something of his slender Guiltiness and Desert of Death, but not so much. Then delivering that to the Sheriff, he open'd a little Book, entitled, *Learn to die*, and desir'd the Company to join with him; so reading over three short Prayers, the last whereof was compos'd only of Confession, and for Pardon, which Prayer he pronounc'd with great Comfort, at every *Amen* clapping himself on the Breast; he clos'd it up, and gave it to his ghostly Father, a Minister and Kinsman of his, who came along with him on Horseback close by the Cart. Then he pull'd out a little Paper, which contain'd an excellent Prayer of his own making; and when he had read, and every one join'd with him in the *Amen*, he commended it also to the Sheriff; and then throwing away his Posie of Flowers, he rous'd up himself, and said to this Effect:

Gentlemen,

THough true it is, what I formerly have deliver'd touching my Guiltiness and Desert of Death, my Meaning was, and is, only in Respect of my Sins towards God, and no farther for Breach of the Laws of the Kingdom, than only lying once with the Lady Castlehaven, through Perswasion of the Earl, who was then in Bed with her, and using some small Force for the Purpose, wherein and by he did emit,
but

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but not penetrate her Body. He said, that he came not to my Lord with a Desire or Intent any Ways to serve him, but was rather inclin'd for the Sea, only Mr. Skipwith had drawn him thither for Society's Sake; where not hearing from his Friends concerning his intended Voyage, and being more kindly respected by the Earl than he look'd for, he stay'd from Week to Week, and Month to Month, contrary to his Intention. Then my Lord, making him his Bed-fellow, did one Day, when Skipwith was with him in the Garden, [but walking somewhat apart] break out in Speeches to him to this Purpose: Brodway, thou art young, lusty, and well-favour'd, and therefore can't but prevail with any Woman thou attemptest; wherefore for that I am old, and cannot live long, my Wife wholly delighting in Lust, which I am neither able nor willing to satisfy, thou may'st do well to lie with her; and so pleasing her, after my Death marry her, and thereby raise thy Fortune. That Fitz-Patrick knew my Lord had solicited him again and again, as hearing him in that Language when they have been in Bed together, and he lying at the Bed's Feet. Which to clear, he charg'd Fitz-Patrick to speak his Knowledge; who reply'd, 'Twas true. Then he was ask'd by one of the Lords, Whether, when my Lord solicited him, my Lady desir'd to have him know her carnally? To which he said, No, he would not wrong her, though she hated him infinitely. But, said he, I know

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well, if I were minded and able to proffer, she would not say nay, for that Mr. Skipwith and Amptill lay with her commonly.

That Skipwith confessed to him, how he had often known her, and gotten a Child upon her, which she, like a wicked Woman, had made away, which was the only and sole Occasion, he the said Skipwith now hated her, and therefore had turn'd to the young Lady Audley; all which he presum'd Skipwith would confess upon his Oath. That the Countess was the wickedest Woman in the World, and had more to answer for, than any Woman that liveth, as he thought. At which Word, that Lord which ask'd him the former Question, said, Grow not into a Passion, Mr. Brodway, and speak nothing for Malice. He answer'd, God forbid I should, I am here in Charity with all living People, and do as freely forgive my Lord Castlehaven, as I do desire God to forgive me; but what I speak, is true, as I shall presently answer before him that redeem'd me, and the Holy Ghost who sanctify'd me: To whom be all Honour and Glory, now and for evermore. Amen.

Then he proceeded farther, and said, That my Lord would have had him done it long before; for one Night coming to him to his Bed-Side, he caught him, and bid him come to Bed to him and his Wife; that thereupon he made to
him

him as if he would; but being got from him, departed the Chamber, never intending to do so foul a Deed; and that for the Reasons aforesaid he hated her of all Women living. Howbeit, that one Time, satisfying my Lord's Desire, he came to Bed to them, where [being gratify'd] Nature provok'd him to a kind of Desire, and he emitted, but did not enter her Body, as he hop'd for Salvation; that he never knew any Woman carnally whilst he lived in my Lord's House.

That it was not his Intentions to bring to Light either my Lord's or my Lady's Shame; but that when he was upon his Oath, he could not but speak the Truth; his Nature being never prone to Lying; or if it were in his Youth, the good Correction of his Parents had rean'd him from it, saying, that his Mother had often told him the Old Proverb, A Lyar is worse than a Thief; and he thought he had more Stripes for that than all Faults else whatsoever, That he bad, as he hoped, spoke nothing of Moment against my Lord at his Arraignment; he could not now remember every Thing; if he had, he desir'd Pardon. And so concluding his Speech, prepar'd himself for Death, pulling out a lac'd Handkerchief, desir'd the Executioner to tie it about his Head. Then pulling off his Garters, and unbuttoning his Doublet, Mr. Goodcoale, the Minister, ask'd him, If

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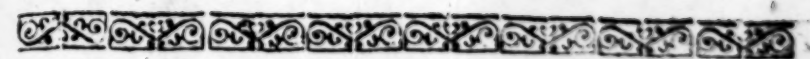
he would not have a Psalm. He said, Yes, with all his Heart. Then he read the 143d Psalm; which Mr. Brodway, pulling up the Handkerchief, sung very chearfully, never changing Colour at all. The Minister desir'd him to make Confession of his Faith; so he pronounc'd aloud the Belief.

Mr. Goodcoale said, These are the Articles of the Christian Faith, according to the Church of England, into which Faith you was baptiz'd; pray signify whether in that Faith you intend to die? He said, Yes; for there is no other Faith [as I suppose] in and by which a Man can be sav'd. Then he made Request to the Sheriffs, and those of Kindred there, That he might be bury'd in his own Country. It was then told him, That it was granted, and Order taken to have it so, wherefore he should now mind his Prayers. When his Kinsman ask'd him, If he had never another Prayer in his Pocket? He said, No. Then ask'd Mr. Goodcoale, If he would say after him? And he said, Yes, with all my Heart; but first he desir'd the Executioner to tie his Hands again. Which being done, Mr. Goodcoale said a short Prayer to recommend his Soul and Body to Almighty God, in, and for the Merits of Christ's Death and Passion, so that he might live and reign with him for evermore. To which the dying Party,
and

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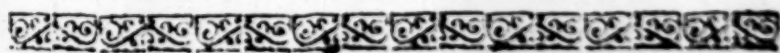
and all the Spectators said, *Amen.* Then he lifting up his Hands to Heaven, with these Words, *Lord Jesus receive my Spirit,* the Cart was drawn away; and some of his Friends beat him on the Breast to rid him of his Pain. *Fitz-Patrick* beheld him hanging; so lifting up his Hands, and commending himself to God, in Manner as aforesaid, his Cart was likewise drawn away.





THE
PROCEEDINGS
UPON THE
BILL of DIVORCE,
Between his GRACE the
DUKE of NORFOLKE
AND THE
LADY *Mary Mordant.*

Printed by the Appointment of his Grace the
DUKE of NORFOLK.



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OF THE BOARD OF ALBANY

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PROCEEDINGS

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BILL OF 1890



T H E
P R O C E E D I N G S
U P O N T H E
Bill of Divorce, &c.

Die Jovis 15. Die Februarii, 1699.

UPON Reading the Petition of
Henry Duke of Norfolk, praying
 Leave to bring in a Bill to dis-
 solve his Marriage with the La-
 dy *Mary Mordant*, and to enable him to
 marry again; he having certain Proof of
 his Wife's living in Adultery with *Sir Jehu*
Germaine, It is Order'd by the Lords Spi-
 ritual and Temporal in Parliament assem-
 bled, That the said Petition shall be taken
 into Consideration to Morrow at Eleven of
 the Clock, and all the Lords summoned to
 attend.

Die

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Die Veneris, 16 Februarii, 1699.

After reading the Order for resuming the Consideration of the Duke of *Norfolk's* Petition, and debate thereupon.

Hodie prima vice lecta est Billa, entituled, An Act to dissolve the Duke of Norfolk's Marriage with the Lady Mary Mordant, and to enable him to marry again. In the Words following.

Humbly sheweth and complaineth to Your most Excellent Majesty, your true and faithful Subject Henry Duke of Norfolk, and Earl Marshall of England, that he did some Years since marry the Lady Mary Mordant his now Wife, and that she hath for divers Years lived in Separation from the said Subject, and hath had unlawful Familiarity and adulterous Conversation with Sir John Germaine, Bart. and is guilty of Adultery on her part, and hath broken the Bond of Matrimony. For as much therefore as your said Subject hath no Issue, nor can hope for any other than spurious Issue to succeed him in his Honours, Dignities, and Estate, unless the said Marriage be declared void and annulled by Parliament, and your said Subject be enabled to marry any other Woman. May it please your most excellent Majesty,

jesty out of your Princely Goodness and Compassion to your said Subject's Misfortune and Calamity, and for the future Support and Comfort of himself and Family, that it may be enacted, And be it enacted by the King's most excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and of the Commons in this present Parliament assembled, and by the Authority of the same, that the said Bond of Matrimony being violated and broken by the manifest open Adultery of the said Lady Mary Mordant, be, and is hereby enacted, declared and adjudged to be from henceforth wholly dissolved, annulled, vacated, and made void to all Intents, Construtions and Purposes whatsoever: And that it shall and may be lawful to and for the said Henry Duke of Norfolk, at any time or times hereafter to contract Matrimony, and to marry (as well in the Life time of the said Lady Mary as if she were naturally dead) with any other Woman or Women, with whom he might lawfully marry in case the said Lady Mary was not living. And that such Matrimony, when had and celebrated, shall be a good, just, and lawful Marriage, and so shall be adjudged, deemed,

deemed, and taken to all Intentts, Construccions and Purposes; and that all and every Child and Children born in such Matrimony, shall be deemed, adjudged, and taken to be born in lawful Wedlock, and to be legitimate and inheritable, and shall inherit the said Dukedome of Norfolk, Office of Earl Marshal of England, and all other Earldoms, Dignities, Baronies, Honours and Titles of Honour, Lands, Tenements and other Hereditaments from and by their Fathers, Mothers, and other Ancestors in like manner and form as any other Child or Children born in lawful Matrimon shall or may inherit or be inheritable according to the course of Inheritances used in this Realm; and to have and enjoy all Priviledges, Preheminences, Benefits, Advantages, Claims and Demands, as any other Child or Children born in lawful Wedlock, may have or claim by the Laws or Customs of this Kingdom. And be it further enacted, That the said Henry Duke of Norfolk shall be entituled to be Tenant by Courtesie of the Lands and Inheritance of such Wife whom he shall hereafter marry, and such Wife as he shall so marry shall be entituled to Dower of
the

the Lands and Tenements whereof the said Henry Duke of Norfolk shall be seized of such Estate whereof she shall be dowable, as any other Husband or Wife may or might claim, have or enjoy. And the Child or Children born in such Marriage shall and may derive, and make Title by Descent or otherwise to and from any of their Ancestors, as any other Child or Children may do, any Law, Statute, Restraint, Prohibition, Ordinance, Canon, Constitution, Prescription or Custom had, made, exercised, or used to the contrary of the Premises or any of them in any wise notwithstanding. And be it further enacted by the Authority aforesaid, That the said Lady Mary shall, and is hereby barred and excluded of and from all Dower and Thirds, and of and from all Right or Title of Dower and Thirds unto or out of any the Honours, Mannors, Lands, or Hereditaments of the said Duke; and that all Conveyances, Joyntures, Settlements, Limitations and Creations of Uses and Trusts of, into, or out of any Honours, Mannors, Lands or Hereditaments at any time heretofore made by the said Duke, or any of his Ancestors or Trustees un-
to

to or upon, or for the Use and Benefit of the said Lady Mary, or any Issue of her Body, or for easie, discharging or counter-securing any the Mannors, Lands and Hereditaments of the said Lady Mary, or any of her Ancestors, shall be from henceforth, so far as concerns the said Lady Mary, or any Issue of her Body, or any Interest for her or them, utterly void and of none effect; and all and every the said Honours, Mannours, Lands or Hereditaments of the said Duke or any of his Ancestors or Trustees, shall from henceforth remain and be to and for the Use and Benefit of the said Duke, and such other Person or Persons, and for such Estates and Interests, and in such manner and form as if the said Lady Mary was now naturally dead, without any Issue of her Body. And also that all Limitations and Creations of any Use, Estate, Power or Trust made by any the Ancestors of the said Lady Mary, unto or for the Use or Benefit of the said Duke, Heirs or Assigns, out of any the Mannours, Lands or Hereditaments of any the Ancestours of the said Lady Mary, shall be from henceforth void and of none effect.

And

* And be it further enacted by the Authorit^y aforesaid, That the said Duke of Norfolk, his Heirs, Executors, Administrators or Assigns, shall, on or before the Five and twentieth Day of March One thousand seven hundred and one, pay or cause to be paid unto the said Lady Mary or her Assignes, the Sum of ten thousand Pounds of lawful Mon^y of England, which was the Portion in Mon^y paid on her Marriage with the said Duke; and on Default of Payment of the said Sum of ten thousand Pounds, on or before the said Five and twentieth Day of March, then, and in such case, she, the said Lady Mary and her Assignes during her Natural Life from the decease of the said Duke, if she shall survive him, shall be entitled to, and shall and may have and enjoy such Joynture and other Advantages as she might or may have or claim by vertue of a certain Indenture, Quinque-partite, made upon and in Consideration of the said Marriage, bearing date the thirteenth day of June, Anno Domini One thousand six hundred seventy and seven, and made
or

* This Clause was added after the Bill was brought into the House of Lords.

or mentioned to have been made between Henry late Duke of Norfolk, then Earl of Norwich, Father of the said Duke, and the present Duke by the Name of Henry Lord Howard of the first Part, Henry Earl of Peterborough and the said Dutcheſs by the Name of the Lady Mordant, ſole Daughter and Heir apparent of the ſaid Earl of Peterborough of the ſecond Part; Henry Marquiſ of Worceſter, William, Earl of Powis, and Henry, Lord O'Brien of the third Part, Arthur Onflow, Eſq; and Thomas Dalmatroy, Eſq; of the fourth Part; Simon Fox, Eſq; and Thomas Weſt, Gent. of the fifth Part; and by Virtue of the Agreements contained in the certain Articles bearing Date the eight and twentieth Day of April, in the Year of our Lord One thouſand ſix hundred ninety four, made or mentioned, to have been made between the ſaid Duke of the one Part, and the ſaid Henry Earl of Peterborough on Behalf of the ſaid Dutcheſs, and the ſaid Dutcheſs of the other Part, according to the true Intent and Meaning of the ſaid Quinque-partite, Indenture and Articles, and alſo during the ſaid Joint-Lives of the ſaid Duke and Dutcheſs, ſhall, and may enjoy five hundred Pounds per Annum, by Virtue of

of an Indenture Quadru-partite, dated the fifteenth Day of June, One thousand six hundred ninety four, made or mentioned to have been made, between the said Duke of Norfolk of the first Part, the said Earl of Peterborough and the said Dutches of the second Part, William Lord Lempster of the third Part, and Sir John Mordant, Knight and Baronet, and William Longueville, Esq; of the fourth Part. And then and in such Case, the said Duke of Norfolk, his Heirs, Executors, and Administrators, is, and are discharged of and from the Payment of the said Sum of Ten thousand Pounds, any Things herein contained to the contrary thereof in any Will as aforesaid, She, the said Lady Mary, shall be wholly barred and excluded from her said Joynture, and of and from all other Advantages, out of the Real and Personal Estate of the said Duke as aforesaid.

Upon the first Reading of the Bill, entitled, *An Act to dissolve the Duke of Norfolk's Marriage with the Lady Mary Mordant, and to enable him to marry again,* It is Ordered by the Lords Spiritual and Temporal in Parliament assembled, That the Dutches of *Norfolk* may have a Copy of the said Bill: And that his Grace the Duke of
Norfolk,

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Norfolk shall be heard by his Council, to make good the Allegations of his Bill, on *Tuesday* next, at Eleven of the Clock in the Forenoon: And that the Dutcheſs of *Norfolk* may have Council to attend at the ſame time if ſhe pleaſe.

Die Sabbati, 17 Februarii, 1699.

Upon reading the Petition of *Mary Dutcheſs of Norfolk*, praying to be heard by her Council before any farther Proceedings be made on the Bill, entituled, An Act to diſſolve the Duke of *Norfolk's* Marriage with the Lady *Mary Mordant*, and to enable him to marry again, It is order'd by the Lords Spiritual and Temporal in Parliament aſſembled, that the Dutcheſs of *Norfolk* ſhall be heard by her Council as deſir'd, on *Tuesday* next at Eleven of the Clock in the Forenoon.

It is order'd by the Lord's Spiritual and Temporal in Parliament aſſembled, That *William Lane*, and *John le Fountaine*, Gent. do attend this Houſe on *Tuesday* the twentieth Day of this inſtant *February*, at Ten of the Clock in the Forenoon, as Witneſſes to be examin'd on the Behalf of the Duke of *Norfolk*.

Die Luna, 19 Februarii, 1699.

It is order'd by the Lords Spiritual and Temporal in Parliament aſſembled, That
Mr.

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Mr. *Daniel Germaine*, Mr. *Simon Briane*, alias *de Brienne*, Mrs. *Anna Maria Briane*, alias *de Brienne*, and Mrs. *Judith Possette*, alias *Perjode*, do, and they are hereby requir'd to attend this House, as Witnesses on the Behalf of his Grace the Duke of *Norfolk*, to Morrow at Eleven of the Clock in the Forenoon.

Die Martis, 20 Februarii, 1699.

After hearing Council upon the Petition of the Dutcheſs of *Norfolk*, pursuant to the Order of the 17th Instant, as also Council for the Duke of *Norfolk*, the following Order was made, viz.

It is Ordered by the Lords Spiritual and Temporal in Parliament assembled, That this House will hear Witnesses for the Duke of *Norfolk*, only to matter of Fact, since the rejecting of the first Bill, except only Mr. *Daniel Germaine*, Mr. *Simon Briane* alias *de Brienne*, Mrs. *Anna Maria Briane* or *de Brienne*, Mrs. *Judith Possette* or *Perjode*, Mrs. *Eleanor Vaneſs*, who are at liberty to give Evidence to matters of Fact before that time, which were not then before the House; and are hereby requir'd to attend this House, as Witnesses on the Behalf of of his Grace the Duke of *Norfolk*, to morrow Morning at Eleven of the Clock.

It is Order'd by the Lords Spiritual and Temporal in Parliament assembled, That

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to morrow at twelve of the Clock this House will proceed to hear Councel and Witnesses for the Duke of *Norfolke*, to make good the Allegations in his Bill, at which time the Dutcheſs of *Norfolk's* Council ſhall be preſent.

It is Ordered by the Lords Spiritual and Temporal in Parliament aſſembled, That *William Bayly* and *Edmund Davies* do, and they are hereby requir'd to attend this Houſe to morrow at Eleven of the Clock in the Forenoon, as Witneſſes to be examined on the behalf of the Duke of *Norfolk*.

Die Mercurii, 21 Februarii.

The Houſe being informed, that Endeavours had been made to ſerve Orders upon the Duke of *Norfolke's* Witneſſes, and ſeveral of them were ſick, and others could not be found.

Joſeph Whilley being call'd in and ſworn, ſaid as follows.

Daniel Germaine — I went to his Houſe, and was told by a Neighbour no body was within; but they bid me go to the Alehouſe at the next Door and I might hear of him; and enquiring there, I found one of his Journeymen, *Peter Hercules*, who told me he had not been at Home theſe ſix Months, nor could not tell when he would return; but I ſhew'd him the Original Order, and ſerved him with a Copy, and told

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told him his Master was to appear at the Duke of *Norfolk's* Lodgings, at the House of Lords, to morrow at Eleven a Clock as a Witness for him.

Mr. *Simon Briane*,] I went to his House in *St. James's* Street, and Mr. *Possette's* Man, *Jer. Hoffman* came to the Door, who told me Mr. *Briane* went to *Kensington* that Afternoon; and no sooner had he said so, but Mr. *Possette* came in, who told me the same, and I ask'd him to speak with Mr. *Briane's* Wife; and he told me she was so weak, that I could not serve her with the Order. Then I ask'd to see Mrs. *Possette* his his own Lady; he likewise told me she was sick, and could not be spoke to; so I shew'd him the Original Order, and left the Copy with himself, for his Lady and Mr. *Briane's* Lady, and forthwith went to *Kensington* to serve the Order upon Mr. *Briane*; but not meeting with him after a great deal of Inquiry, I left with his Maid-Servant at his Lodgings, and served her with it, who told me she would give it her Master that Night, who waited the King's coming from *Hampton-Court*. This Morning I went again to his House at *St. James's*, and sent for his Servant, who told me his Master did not come to Town last Night, so I believe his Maid had given him the Order.

Mrs. *Elianor Vanesse*.] I inquir'd at every House in *Kensington*, where I was inform'd there

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there were *Dutch* People, and could not know of any of them of any such Woman; but the Earl of *Albemarle's* Steward, and the Porter of the Lodge going into *Hide-Park* (*Kensington*) promised me they would enquire after her, and send me Word if they heard of such a Person.

Then *George Starkey* being called in and Sworn, said as followeth, I served *William Bayly* with the Order of this House, to attend as a Witness this Day, he told me he was under a Course of Physick, and could not stir out without Danger of his Life, but any other Day he would attend.

Then a Certificate under the Hands of *John Hutton* and *Theodore Colladon*, Doctors of Physick was produc'd, and read as follows:

We whose Names are underwritten, Doctors of Physick, do certify, that *Mary* Wife of *Simon de Brienne*, and *Judith* Wife of *Peter Persode*, have been for some time, and are at this present so extraordinary ill in Bed, that neither of them can remove from thence, without Danger of their Lives. Witness our Hands at their Dwelling-House in *St. James's Street*, betwixt ten and eleven of the Clock in the Morning, the 21st Day of *February*, $\frac{1692}{1700}$.

John Hutton.

Theodore Colladon.

After

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After which, the following Order was made, viz.

It is Ordered by the Lords Spiritual and Temporal in Parliament assembled, That Doctor *John Hutton* and Dr. *Theodore Colladen*, (who sign'd a Certificate delivered and read this Day, of the Illness of Mrs. *Mary*, Wife to *Simon de Brienne*, and *Judith* her Sister, Wife to Mr. *Peter Persode*) do attend this House to morrow at eleven of the Clock, to attest upon Oath, what they have certify'd.

Then the Form of the Oath formerly given to Witnesses, being read out of the Journal 23. Jan. 1691, the same was agreed to with some Alteration, and is as followeth.

You shall true Answer make to all such Questions as shall be ask'd you by this honourable House, in relation to the Charge of Adultery in the Bill brought in by the Duke of *Norfolk*, against the Dutches of *Norfolk*, with Sir *John Germaine*. You shall declare your whole Knowledge of this Matter; and shall speak the Truth, and nothing but the Truth, as well upon the Matter as you shall be examin'd on behalf of his Grace the Duke of *Norfolk*, as upon such Interrogatories as shall be exhibited on behalf of the Dutches of *Norfolk*, without Favour or Affection to either Party. So help you God, and by the Contents of this Book.

D

Then

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Then the Council being call'd in, they for the Duke having opened the Nature of their Evidence, Mrs. *Elianor Vanesse* was Sworn, and being ask'd some Questions by the Duke's Council, she appeared to be a *Dutch* Woman, and could not well understand *English*, and an Interpreter being offered by the Duke's Council, Council withdrew, and the House agreed, that the Dutchess's Council should have an Interpreter also; and the Council being call'd in again, were told so by Order of the House, and that they might proceed to any other Witnesses. The Duke's Council desir'd that they might begin with Mrs. *Vanesse*, and withdrew.

Then the following Orders were made.

It is order'd by the Lords Spiritual and Temporal in Parliament assembled, That the Agents for the Duke of *Norfolk*, do forthwith deliver a List of the Witnesses they intend to examine on the Behalf of the Duke of *Norfolk*, to the Dutchess of *Norfolk*, or her Agents.

It is order'd by the Lords Spiritual and Temporal in Parliament assembled, that to-morrow at twelve of the Clock, this House will proceed to hear Council and Witnesses for the Duke of *Norfolk*, to make out the Allegations in his Bill, at which Time the Dutchess of *Norfolk*'s Council shall be present.

It

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It is order'd by the Lords Spiritual and Temporal in Parliament assembled, that *Daniel Germaine*, *Simon Briane*, alias *de Brienne*, *Anna Maria Briane*, alias *de Brienne*, *Judith Possette*, alias *Persode*, — *Goutaken*, — *Pontack*, *Susanna Barrington*, — *Hugonee*, *Mrs. Keemer*, *Joseph Barger*, *William Lane*, *John le Fountaine*, *Jonathan Browne*, — *Harter*, and — *Welburne* do, and they are hereby requir'd to attend this House to Morrow at Eleven of the Clock in the Forenoon, as Witnesses to be examin'd on the Behalf of the Duke of *Norfolk*.

It is order'd by the Lords Spiritual and Temporal in Parliament assembled, that *William Allen* and *John Maitland* do, and they are hereby requir'd to attend this House, 'on Service of this Order, as Witnesses to be examin'd on Behalf of the Duke of *Norfolk*.

Die Jovis 22 Februarii, 1699.

The House being inform'd, that Sir *Theodore Colladon* and Dr. *Hutton* attended, as order'd Yesterday.

Sir *Theodore Colladon* being call'd in, and sworn, says, he saw Mrs. *de Briane* Yesterday; she was very ill fainting in Bed, and scarce able to live. Mrs. *Persode* he also visited, who having miscarry'd by a Fright,

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Could not stir out of her Bed without Hazard of her Life.

Dr. *Hutton* being call'd in, and sworn, says, he visited Mrs. *Mary de Briane* this Morning; she hath been sick three Months, is in an ill Condition of Health, and it will endanger her Life if she comes abroad. Mrs. *Perfode* is very ill; she cannot come out of her Bed, without endangering her Life.

Then the Council were call'd in for the Duke and Duchess of *Norfolk*.

The Dutchess's Council mov'd to have the Witnesses Christian Names, and Place of their Abode, and said they had not the Names 'till this Morning.

Then the two Interpreters took the following Oath:

YOU shall well, truly, and faithfully interpret between the House and Elianor Vanesse, the Witness, touching the Matters she shall give in Evidence.

Council being withdrawn, the House agreed to tell the Duke's Council, that they might proceed to examine Witnesses that were nam'd the Day before. And that if the Dutchess's Council had any Exception, they might now make it against them or their Testimony, and that the Duke's Agents should give the Christian Names of
their

their Witnesses, and as much as they can of the Places of their Abode to the Agents of the Dutcheſs.

The Council being call'd in again, were told what was agreed by the Houſe touching the Witnesses. Then the Duke's Council proceeded, and call'd in *Elleanor Vanefſe*, who being ask'd ſeveral Queſtions by the Duke's Council, the Interpreter ask'd them of her in *Dutch*, and ſhe answered again to the Interpreter, and he declar'd her Answers to the Houſe in *Engliſh*.

Nicholas Hauſeur, being ſworn in like manner, gave his Teſtimony in *French* by an Interpreter.

Then Council being withdrawn, the following Orders were made, *viz.*

It is order'd by the Lords Spiritual and Temporal in Parliament aſſembled, that the Short-hand Writers, who took the Witnesses Evidence, to dictate to a Clerk, in order to be tranſcrib'd what the Witnesses have ſaid, and that the Examinations, with the Short-hand Writers Books and Papers, are to be ſeal'd up, and kept by the Clerk until the next Day the Houſe ſhall proceed on this Matter, and then what is tranſcrib'd, ſhall be read at the Bar in the Preſence of the Witneſs.

It is order'd by the Lords Spiritual and Temporal in Parliament aſſembled, that on *Saturday* next at Twelve of the Clock,

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this House will proceed to hear Council and Witnesses for the Duke of *Norfolk*, to make out the Allegations of his Bill ; at which Time the Dutcheſs of *Norfolk's* Council ſhall be preſent.

It is order'd by the Lords Spiritual and Temporal in Parliament aſſembled, that *Simon Briane*, alias *de Brienne*, ſhall be, and is hereby requir'd to attend this Houſe, on *Saturday* next at Eleven of the Clock in the Forenoon, to be examin'd as a Witneſs on Behalf of the Duke of *Norfolk*.

Die Veneris 23 Februarii, 1699.

It is order'd by the Lords Spiritual and Temporal in Parliament aſſembled, that *James Berger*, *Suſanna Barrington*, *Frances Knight*, and *James Mackdonnell* ſhall, and they are hereby requir'd to attend this Houſe to Morrow at Eleven of the Clock in the Forenoon, as Witneſſes to be examin'd on the Behalf of the Duke of *Norfolk*.

Die Sabbati 24 Februarii, 1699.

The Houſe being mov'd, that Mr. *Simon Briane*, or *de Brienne*, may be ſent for in Cuſtody, for not having attended according to the Order of this Houſe, as a Witneſs for the Duke of *Norfolk*.

Here-

Hereupon *Thomas Kellet* was call'd in, and being sworn, said to this Effect, viz.

I went to the House of the Dutchess of *Norfolk*, and enquir'd for Mrs. *Susanna Barrington*, and if she liv'd there; a Man said, No. I ask'd if he could tell me where she was, he said, No.

Then I went to serve Mr. *Simon Friane*, or *de Brienne*; and being at his House, enquir'd for him; his Man said, his Master was gone to *Kensington*: He took the Order, and said he would give it his Master.

I went to the Lord *Cutts's* House, and ask'd for one Mr. *Berger*, but could not hear of him. I went to my Lord's Stables, and ask'd his Coach-man for Mr. *Berger*; he said he liv'd in *Hedge-Lane*; there I went and found his Wife, and deliver'd the Order to her; she said she would have nothing to do with it, and that Mr. *Germaine* gave him Bread. I saw him Yesterday, and he told me he had been with the Duke of *Norfolk*, and would attend him again.

I went again to the Dutchess of *Norfolk's* House to serve Mrs. *Barrington*, and one told me she was seen look out of a Window, and another told me she was at Home; so I could not serve the Order on her.

The House being inform'd upon Oath, that a Copy of the Order for Mr. *Simon Briane*, or *de Brienne*, to attend this House, as a Witness for the Duke of *Norfolk*, was

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left with his Servant at his dwelling Place, and he not attending this House, it is order'd by the Lords Spiritual and Temporal in Parliament assembled, that the Serjeant at Arms, attending this House, do forthwith attach the Body of the said *Simon Briane*, or *de Brienne*, and bring him to the Bar of this House, to answer for his Offence; and this shall be a sufficient Warrant on that Behalf.

To the Serjeant at Arms attending this House, his Deputy or Deputies, and every of them.

The House was inform'd, that one *Hugonee*, Servant to the Lord *Haversham*, being summon'd, was since gone away. Of which the Lord *Haversham* gave the House an Account to this Effect, That he receiv'd a Letter from the Duke of *Norfolk*, wherein he desir'd his Servant might attend the House this Day; and his Lordship writ an Answer that he should. But when his Lordship arose in the Morning, his Servant was gone away, and told the Landry Woman or Servants, he had a Quarrel, and was going for *Holland*.

The Council and Witnesses being call'd in for the Duke of *Norfolk*, the Dutches's Council present, and *M. Vanesse* at the Bar, the transcrib'd Depositions from the Short-hand Writer were read to her, and she sign'd them.

In

In like manner *Nicholas Hanseur's* Deposition was read, and he sign'd it.

Then the Council proceeded, and examin'd *William Bayly*, and his Deposition was taken in Short-hand, was left with the Clerk to be transcrib'd, in order to be read to him on *Monday* next.

Council withdrew, and it was order'd, that *William Bayly* do attend this House on *Monday* next.

Then the following Orders were made.

It is order'd by the Lords Spiritual and Temporal in Parliament assembled, that on *Monday* next at Twelve of the Clock, this House will proceed to hear Council and Witnesses for the Duke of *Norfolk*; at which Time the Dutcheſs of *Norfolk's* Council shall be present.

It is order'd by the Lords Spiritual and Temporal in Parliament assembled, that Mr. Secretary *Vernon* be desir'd to send to this House on *Monday* next at Eleven of the Clock, the Books wherein the Entries of Passes are in the Months of *January*, *February*, and *March*, One Thousand Six Hundred Ninety One.

Die Luna 26 Februarii, 1695.

The Council for the Duke and Dutcheſs of *Norfolk* were call'd in, and the Exami-

tion of *William Bayly* was read to him, and he being cross examin'd by the Dutcheſs's Council, and that Examination read to him, he ſign'd them.

Then *John Curry* was call'd in, and ſworn, ſaid, I went to ſerve Mr. *La Fountaine* and Mr. *Lane* with the Order for their Attendance.

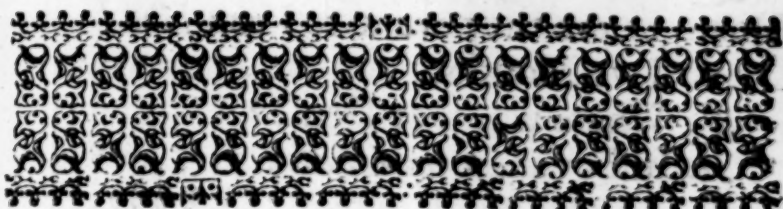
Mr. *La Fountain's* Wife lay in ; he ſaid he could not be forc'd to come, he was not a Subject of *England*, and is the Lady Dutcheſs's Servant.

Mr. *Lane* gave me a Letter to the Clerk of the Parliament, which was read ; and in it he deſir'd farther Time, not having Horſes, nor could ride faſt.

The Dutcheſs's Council mov'd for Copies of the Depoſitions taken, and Time for the Dutcheſs to be heard, and withdrew. Then the following Orders were made, *viz.*

An Order for both Parties to have Copies of the Depoſitions, and ſo much as relates to that Matter in the Journal.

The other for hearing the Dutcheſs by her Council, on *Monday* next, and the Duke's Council then to be preſent.



DEPOSITIONS of *Elianor Vanesse*.

Die Jovis 22 Februarii, 1699.

E*Lianor Vanesse*, sworn, deposeth as followeth, viz.

Question. Do you know Sir *John Germaine* and the Dutcheſs of *Norfolk*?

Answer. Yes.

Q. How long have you known them?

A. Two Years.

Q. When did you first come acquainted with them?

A. Sir *John Germaine*'s Sister hir'd me for a Cook-Maid the Summer after the King came for *England*.

Q. In what Month of that Year?

A. In *May*.

Q. Did you live with either of them as a Servant-Maid?

A. I liv'd two Months with my Lady-Dutcheſs in Sir *John Germaine*'s House.

Q. How long did you live in the House with them?

A. 'Till they went to *Vaux-Hall*.

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Q. How long was the Dutcheſs in the Houſe before they went to *Vaux-Hall*?

A. Two Months.

Q. Where was that Houſe?

A. Juſt over *Spring-Garden*.

Q. At the Time when the Lady Dutcheſs liv'd with Sir *John Germaine*, what Company and Converſation did they keep with one another, and in what manner?

A. Like Man and Wife.

Q. Where was it the Lady Dutcheſs liv'd when you came firſt into *England*?

A. In Sir *John Germaine's* Houſe.

Q. Where did ſhe live then?

A. The Dutcheſs liv'd there then.

Q. How long continu'd ſhe there?

A. About two Months.

Q. How did they live together during that Time?

A. Like Man and Wife.

Q. Saw you them in Bed together at any Time, at that Place in the Cock-pit?

A. Yes.

Q. How often?

A. Many times, as often as Man and Wife ſhe ſaw them in Bed, but did not put them in Bed in thoſe two Months.

Q. Did you think any otherwiſe but that they had been Man and Wife?

A. She did not at firſt, but afterwards ſhe did; and then they kept her within Doors, for fear ſhe ſhould tell it.

Q. Whither

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Q. Whither did the Dutcheſs go after that two Months?

A. To *Vaux-Hall*.

Q. How long did ſhe live there?

A. About two Years.

Q. Did Sir *John Germaine* uſe to come and keep Company with the Dutcheſs there?

A. Yes, he uſ'd to come and dine with her ſometimes, and he lay there ſometimes.

Q. What Converſation had Sir *John Germaine* with the Dutcheſs at *Vaux-Hall*?

A. They convers'd together as Man and Wife.

Q. How long?

A. Sometimes one Night, ſometimes two.

Q. How often did he uſe to come thither?

A. Sometimes twice, ſometimes three times a Week, and ſometimes but once.

Q. Had they one Bed or two?

A. But one.

Q. What Name did the Dutcheſs go by at *Vaux-Hall*?

A. By the Name of the Lady *Beckman*.

Q. What Kin was Sir *John Germaine* pretended to be to the Lady Dutcheſs?

A. Her Brother, my Lady Dutcheſs ſaid ſo.

Q. Did

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Q. Did you go with them to *Vaux-Hall*, or not?

A. She went with the Lady Dutcheſs.

Q. Whoſe Servant was you there?

A. Lady Dutcheſs's.

Q. How long did you ſerve the Lady Dutcheſs?

A. She ſtaid with her 'till ſhe went to *Mill-bank*.

Q. How came you to leave their Service?

A. They ſent her away upon the Account of the late Tryal.

Q. Who went with you?

A. Mrs. *Sufannah*, Chamber-maid to the Lady Dutcheſs, and Mr. *Nicholas*, that was Gentleman to Sir *John Germaine*.

Q. What's his Name?

A. *Nicholas Hoſier*.

Q. Who took care of your Paſſage?

A. *Nicholas Hoſier*.

Q. Whither was you order'd to go?

A. To *Holland* to the *Hague*, they paid her in full, and promis'd fifty Livers beſides.

Q. Was any Part of it paid, and by whom?

A. She receiv'd it in four Quarters from his Brother *Philip* at the *Hague*.

Q. Whoſe Brother?

A. Sir *John Germaine*'s Brother.

Q. Who

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Q. Who hir'd you when you came to England?

A. Mr. *Briane's* Wife.

Q. What Kin is she to Sir *John Germaine*?

A. His Sister; and they promis'd if matters did not go for the Dutchess, she would come to *Holland* herself, and take her into her Service again.

Q. Have you seen Sir *John Germaine* and the Dutchess in Bed together at *Mill-bank*?

A. Once or twice.

Q. How long had the Lady Dutchess liv'd at *Mill-bank* e'er you left her Service?

A. Nine or ten Weeks.

Q. How came you to see them in Bed together.

A. By reason none was suffer'd to come into the Room, the Bed-Chamber, but she and another Maid, to bring Necessaries, as Water to wash their Hands, and to clean the Room.

Q. Did you see them at their undressing when they went to Bed?

A. She undress'd them herself, and saw them in Bed.

Q. Give an Account how you two came to be admitted into the Chamber, and what you saw there.

A. She help'd them to Bed, and saw them go to Bed together.

Q. Saw you them next Morning?

A. Yes.

Q. On

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Q. On what Occasion came you into the Chamber in the Morning?

A. She came with Chocolate, and Water to wash their Hands.

Q. Did you ever see Mr. *Nicholas Hosier* there?

A. Yes: He did the Business that she did when she could not be present; he was *Valet de Chambre*.

Q. Was he *Valet de Chambre* to Sir *John Germaine*, or to the Dutcheſs?

A. He belong'd to the Dutcheſs at *Vaux-Hall*, and afterwards to Sir *John Germaine*.

Q. Came he to Sir *John Germaine* before the Lady Dutcheſs went to *Vaux-Hall*, or not?

A. The Dutcheſs was at *Vaux-Hall* when he came to Sir *John Germaine*.

Q. Who liv'd with the Dutcheſs at *Vaux-Hall*?

A. Sir *John Germaine's* Sister.

Q. Who hir'd you?

A. Mrs. *Briane*, Mr. *Briane's* Wife.

Q. Was there no other Relation of Sir *John Germaine's* that liv'd there besides?

A. Mrs. *Judith*.

Q. What Mrs. *Judith*, what's her Name?

A. She does not know.

Q. What Kin was Mrs. *Judith* to Sir *John Germaine*.

A. His Sister.

Q. Did the Dutcheſs use to go to no other Place?

A. None

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A. None but to the neighbouring Gardens to gather Flowers.

Q. When you were at *Mill-bank*, did you ever see the Dutcheſs's Father?

A. She hath been ſeveral times at the Dutcheſs's Fathers; and the Lady Dutcheſs told her Father and Mother that ſhe brought her from *Holland*; ſhe dreſs'd three Diſhes of Meat by order of the Dutcheſs.

Q. Who was the Lady Dutcheſs's Father, where did he live?

A. He liv'd at *Mill-bank*, but could not tell his Name: The Lord *Peterborough*, ſhe ſays, but could not think on't before now.

Q. When ſhe liv'd with *Germaine* at the Cock-pit, was there no other that liv'd with them at that Time?

A. No Body.

Q. Did Sir *John Germaine*'s Brother-in-Law or Siſter lye in the Houſe at any time?

A. Yes, when they came firſt to *England* they us'd to lye there.

Q. Name them?

A. Mr. *Briane*, and his Wife.

Q. Did you ſee any of Sir *John Germaine*'s Relations at any time in the Room, during the time that the Dutcheſs was in Bed with him?

A. Yes, Mr. *Briane* and his Wife.

Q. Was Sir *John Germaine* in Bed at that time with the Dutcheſs?

A. Yes.

Elianor

Elianor Vanesse cross examin'd.

Q. Was it at *Vaux-Hall* that the Lady Dutcheſs ſaid that *Germaine* was her Brother?

A. Yes.

Q. Did the Dutcheſs tell you that Sir *John Germaine* was her Brother?

A. She gave it out among the Neighbours, but never told her ſo.

Q. Was you Cook-maid?

A. She was hir'd for Cook-maid.

Q. Did you continue to act as Cook-maid?

A. Yes, at *Vaux-Hall*.

Q. Was you at the Cock-pit?

A. She uſ'd to clean the Rooms; and no body was ſuffer'd to come into the Room but ſhe, Mrs. *Susannah*, and *Nicholas*.

Q. Was there no other Woman in the Houſe but you?

A. Yes, Mrs. *Susannah*.

Q. Where did you ſee Sir *John Germaine* and the Lady Dutcheſs in Bed?

A. At *Vaux-Hall*.

Q. When came you from *Holland*?

A. About five or ſix Weeks ago.

Q. Where have you been ſince?

A. She does not know any Place or Street in *London*.

Q. How came you over?

A. About

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A. About a Year and half ago she met *Nicholas* at *Amsterdam*: She ask'd him how he did, and if he had got a Place; he answer'd no, but he believ'd he should very soon have one in *England*.

Q. Who sent for you, or brought you over from *Holland* this last time.

A. She met Mr. *Nicholas* about a Year ago, and said, she had a great mind to go and live in *England* again; and he said he would get a Place for her.

Q. Who sent for her?

A. Does not know.

Q. When you came over, who paid your Passage, and first took Care of you?

A. *Nicholas* hath given her what she spent since.

Q. Who brought you to Town, and who furnish'd you with Money, and where did you Land, what House did you first come to?

A. She Landed at *Gravesend*.

Q. Who receiv'd her there; or, when she came to Town, brought her to any Place to lodge at?

A. *Nicholas* brought her to a Place where she was secure.

Q. What Place is it?

A. She does not know, she was never in *London*.

Q. Did not you live at *Vaux-Hall*, and at Sir *John Germaine's* House in the Cock-pit?

A. She

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A. She was no further than those Houses, she means she was never in the City of *London*.

Q. Where is the House she has been at these six Weeks?

A. She can't tell whereabouts it is.

Q. Whether was you not sent for back from *Holland* to be a Witness?

A. No, knew nothing of it 'till about — Now about eight or nine Weeks ago.

Q. In what Street is the House you have been at?

A. I can't tell.

Q. How long is it since you went into *Holland*, since you left the Dutchess's Service?

A. About eight Years ago.

Q. Did you never tell any Body the Occasion of your going over?

A. Yes, in *Holland*, but not here.

Q. To whom did you tell it?

A. To a great many.

Q. Know you any of those to be in *England* that you told it to?

A. Does not know any.

Q. Did you ever discover this matter of your own Account, or was you ask'd to do it?

A. I said I would tell the Truth if I were ask'd.

Q. Can you name the Person that ask'd you?

A. Mr. *Nicholas*.

Q. Had

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Q. Had you any Discourse about this matter about eight Weeks ago?

A. When I ask'd Mr. *Nicholas* if he could get me a Place in *England*, I told him I would say the Truth.

Q. What Discourse had you with Mr. *Nicholas* about it?

A. I ask'd Mr. *Nicholas* whether there was any Danger of any such Thing; he said he knew nothing of it.

Q. Did you ever discover that you were sent out of the Way into *Holland*?

A. No.

Q. Whether you and this Gentleman that interprets, have not talk'd most of this matter before you came hither?

A. No.

Q. Who have you talk'd to about this matter, since you came into *England*, besides *Nicholas*?

A. Nobody.

Q. Are you a single Woman or a marry'd Woman?

A. A single Woman.

The Duke's Council.

Q. Was it your Business to look after the Chamber, to keep the Door constantly, or on what Occasion?

A. I us'd to wash the Dutcheſs's Cloaths, and bring to Sir *John Germaine's* House, and
keep

keep the upper Rooms clean, where Sir *John Germaine* lay.

Q. Did *Susan* go over with you into *Holland*, and come back with you?

A. Mr. *Nicholas* brought me into a Room where she was kept, and I stay'd a-while with her.

Q. Did *Susan* go with you, and come with you again?

A. *Nicholas*, and *Susan*, and I, were in a Room together, and Mr. *Germaine* came every Night when the House was broke up, and told us what pass'd.

Q. Did *Susan* go to *Holland* with you? Whether did you go before *Nicholas*, or with him?

A. Sir *John Germaine* order'd *Nicholas* and she to go into *Holland*, and *Nicholas* went with her.

Signum

Elianor Vanesse.

DEPO-



DEPOSITIONS of *Nicholas Hausfeur.*

Die Jovis 22 Februarii, 1699.

Nicholas Hausfeur Sworn.

Q. **W**Hether he knows Sir *John Germaine* and the Dutcheſs of *Norfolk*?

A. Yes, Sir, I underſtand, I know both.

Q. How long have you been acquainted with Sir *John Germaine*, and upon what Occaſion?

A. The firſt he came to know him was in *Suffolk-Street*.

Q. Whether ever he was a Servant to him?

A. Yes, I was a Servant to him there.

Q. When was it you firſt came into Sir *John Germaine's* Service?

A. It was above half a Year before King *James* went away.

Q. Did you live with Sir *John* or the Dutcheſs?

A. With Sir *John Germaine*.

Q. Where did he dwell at that time?

A. He had Lodgings at the *Golden-Ball*.

Q. Was you with him afterwards when he was at the Cock-pit?

A. Yes,

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A. Yes, and I liv'd with him at the Cock-pit too.

Q. At that time did you know the Dutchess of *Norfolk*?

A. I knew her, because they told me she was so.

Q. Was there any Lady that liv'd with Sir *John Germaine* at the Cock-pit?

A. At that time there was Mrs. *Brienne*, Sir *John Germaine*'s Sister.

Q. Was there any body else us'd to lodge there?

A. There was none there but her at first.

Q. Was there any other afterwards?

A. Yes, about two or three Months after he was there; but I don't justly know how long afterwards.

Q. Who was there then?

A. There was his Sister, by Name Mrs. *Judith Germaine*.

Q. Do you know any Thing about the Dutchess of *Norfolk* at that Time?

A. Yes.

Q. What Conversation had Sir *John Germaine* and the Dutchess of *Norfolk*?

A. She was in the House, and they eat and drank together, and lay together.

Q. Where was that?

A. At Sir *John Germaine*'s House next the Cock-pit.

Q. How came you to know they lay together?

A. Be-

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A. Because I was his *Valet de Chambre*, and help'd to undress and put him to Bed.

Q. Where was the Dutchess at that Time?

A. The Dutchess was sometimes a-bed, and sometimes not, according as he came Home, early or late.

Q. How long was the Dutchess with Sir *John Germaine* at the Cock-pit?

A. She was at the Cock-pit before I came there.

Q. Whether he went from Sir *John Germaine's* Service, after he came to live there?

A. He left his Service several times.

Q. When was the first time he went from Sir *John Germaine's* Service?

A. The first time he left his Service, was in *Suffolk-Street*.

Q. How long was it before he came to live with him again?

A. He came into his Service again the Summer after this present King came into *England*.

Q. What Time of the Summer was it?

A. He can't justly tell that.

Q. Whether the Dutchess was there before he came to the Cock-pit, or not?

A. She was there before.

Q. How long continu'd she there?

A. About fifteen Days after he came to Sir *John Germaine*.

E

Q. In

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Q. In what manner did Sir *John Germaine* and the Dutcheſs live there, during thoſe fifteen Days?

A. He ſays he hath already explain'd that before; he uſed to undreſs him, and put him a-bed, together with the Dutcheſs

Q. Where did the Dutcheſs live after ſhe went from Sir *John Germaine's* Houſe?

A. She went and dwelt at *Vaux-Hall*.

Q. By what Name did ſhe go when ſhe was at *Vaux-Hall*?

A. She went by the Name of my Lady *Beckman*.

Q. Whether he went with her, or continu'd in Sir *John Germaine's* Service?

A. He went with my Lady Dutcheſs for ſome Time, by Sir *John Germaine's* Order; he was ſometimes with the one, and ſometimes with the other; ſometimes one paid him, and ſometimes the other.

Q. Whether Sir *John Germaine* went to *Vaux-Hall*?

A. He came there ſometimes; he has ſeen him there ſeveral Nights.

Q. Whether he ſtay'd all Night there?

A. Sometimes.

Q. Whether he was alone, or any Body was with him?

A. There was ſome Body lay with him.

Q. Who upon his Oath?

A. Madam the Dutcheſs, Madam *Beckman*.

Q. How

Q. How know you that ?

A. Because he undress'd him when they lay together.

Q. How often was that ?

A. He can't justly say how often, but it was several times.

Q. What Service was he in when he went out of *England*, and upon what Occasion ?

A. He left Sir *John Germaine's* Service at that Time, when the Tryal was depending between the Duke and Dutcheſs of *Norfolk*.

Q. By whose Order did you leave that Service ?

A. He desir'd Leave.

Q. How came you to leave that Service at that Time ?

A. Because he was afraid he should be oblig'd to come and speak the Truth of what he had seen.

Q. Whether any went with him, and who went from their Service when he went ?

A. There were two Servants of the Dutcheſs's.

Q. What was their Names ?

A. One is call'd *Susanna Barrington*, and the other *Elleanor Vaneſs*.

Q. Whither did they go ?

A. He was order'd by Sir *John Germaine*, to hire Lodgings for them, where they should be unknown and private.

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Q. What was the Reason why they should be in Private ?

A. He knows no other Reason, but the Difference before the Parliament, between the Duke and Dutcheſs of *Norfolk*; he was oblig'd to take the Lodgings, becauſe the Wind was contrary for them to go for *Holland*, and took private Lodgings for them, by the Order of Sir *John Germaine*.

Q. What became of *Susan Barrington* after that ?

A. She ſtay'd about three Weeks with him, and then Sir *John Germaine* came and fetch'd her back again, and where he carry'd her, he does not know.

Q. What became of *Vaneſs*, and your ſelf afterwards ?

A. When the Wind favour'd, we paſſ'd the Seas.

Q. What Time of the Year was it ?

A. It was about *Eaſter* that he came into *Holland*.

Q. What Time he went from his Service, and was order'd to be private ?

A. It was about the Time of the Tryal.

Q. Whether he hath any Paper under Sir *John Germaine's* Hand for his Diſcharge? We do not ask it, but only to reſreſh his Memory.

This Paper was dated Eighth of February, One thouſand ſix hundred ninety two; reckoning the Year to begin the firſt of January. Whe-

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Whether that was the Time he left the Dutchess's Service?

A. Yes, about six or eight Weeks after he went to Sea.

Q. Where did you stay in the mean Time?

A. In the *Minories*, near the *Tower*.

Q. How came you to stay there so long, after you were out of Service, before you went beyond Sea?

A. Because the Wind was contrary.

Q. Who went over with him, what became of *Elienor Vanes*?

A. She went with him to *Holland*.

Q. Who bare her Charges thither?

A. Sir *John Germaine* gave him seven Guineas to pay for the Expences that he was at here, and to cross the Sea.

Q. How long after that he continu'd in *Holland*, before he came into *England*?

A. He did not stay long in *Holland*, but went into his own Country.

Q. How long was it before you return'd to *England*?

A. The Summer following.

Q. Was he sent for over into *England*, and by whom?

A. Yes, Sir *John Germaine* sent to him often, by himself, and by his Brother in *Holland*.

Q. When he came over in the Summer following

following (in Ninety Two) whose Service did he come to?

A. He return'd to Sir *John Germaine*.

Q. Where did he live at that Time?

A. Where he lives at present, at the Cock-pit.

Q. Whether after he came back in the Year One thousand six hundred ninety two, he observ'd any Conversation between Sir *John Germaine*, and the Dutches?

A. Yes, he says he saw them come together at their House.

Q. What more?

A. He again then saw them a-bed together.

Q. Where?

A. In the House of Sir *John Germaine*.

Q. How often may that be?

A. He can't justly tell how often.

Q. Whether it was often or not?

A. No, he can't say very often.

Q. When was the last time he ever saw them a-bed together?

A. The last time he saw them a-bed, was not at the Cock-pit.

Q. Where then?

A. It was at the Dutches's own House, where, as he believes, she lives still.

Q. Whereabouts in the Town?

A. It is upon a Corner of the Park, near my Lord of Oxford's.

Q. How

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Q. How long ago since he saw them last a-bed together?

A. He can't justly tell the Time, it was about two or three Months before he went away.

Q. Did he mean the first, second, or third Time?

A. It was two or three Months before he went away the last Time.

Q. In what Year did he go away the last Time?

*Let him look upon any Note he hath
to refresh his Memory.*

Accordingly he look'd upon a Paper.

A. 'Tis the twenty seventh of April,
One thousand six hundred ninety six.

Q. Did you go away then the last Time?

A. Yes, he says, that 'twas the last Time he left his Service.

Q. How long before that, did you see them a-bed together?

A. He says it was about two Months and a half before he left the Service.

Q. When my Lady Dutches liv'd at Vaux-Hall, whether he can name any Body else that was a Servant in the House at that Time?

A. Yes, there was *Eleanor Vanes*.

Q. What Servant was she?

A. She look'd to the Kitchen.

Q. Whether he has seen her in the

Chamber when the Dutcheſs was a-bed there?

A. Yes, very often.

Q. How came ſhe that was Cook-maid, to be in the Chamber?

A. He ſays he can't tell the Reaſon, or what Buſineſs ſhe had there, but there ſhe was for one Thing or other, beſt known to herſelf, he does not know.

Q. Whether when the Dutcheſs was at *Vaux-Hall*, any Relations of Sir *John Germaine*, came to her there?

A. Yes, they would come and ſee her.

Q. Who were they?

A. Mrs. *Brienne*, and Mrs. *Judith*; he ſays he does not remember that Mrs. *Brienne* has lain there, but Mrs. *Judith* has.

Q. Where it was, and upon what Occaſion, he met with *Elianoꝝ Vanesſs*, after he carry'd her over into *Holland*?

A. I met her in *Amſterdam*.

Q. Whether he came over into *England* with her, and upon what Occaſion?

A. I met her at *Amſterdam*, and ſhe ask'd me what Buſineſs I had there, whether I had a Maſter, and I ſaid no.

Q. When was that?

A. About a Year and half, to his Remembrance.

Q. Whether he came over with her the laſt Time?

A. Yes, he came over into *England* with her

her in Company, about six or seven Weeks since.

Q. Where has she been since she came into *England*?

A. She was in Lodgings.

Q. Where?

A. He put her into private Lodgings, that she should be secure.

Q. Why did he put her into private Lodgings?

A. Because he was afraid, in the Circumstances that he is now, that some Body might give them some Affront, or do them an Injury, and therefore he thought it best to be in some Place of Security.

Q. What particular Reason had he, why he should take private Lodgings, or have that Fear upon him?

A. He says, when he was last here, Sir *John Germaine* came up one Night in a great Passion, and swore, and said, some Body would betray him.

Q. I desire he might repeat that again?

A. Sir *John Germaine* came one Night up Stairs, and said, that *Nicholas*, this Rogue, would betray him.

Q. Who was that?

A. He says, 'twas one *Nicholas Russett*, that serv'd him, or both, he can't tell, but he was in his Service, that he heard these Words, and that he thought in these Cir-

cumstances, the securest Way would be to take private Lodgings.

Q. What brought him into *England* the last Time? Whether he was spoke to, to come, and for what Purpose?

A. He says, that about two or three Years ago, he happen'd to meet with a Friend, and he desir'd him, if he heard of a good Place for him in *England*, to let him know of it, for he would go and serve there again.

Q. Whether he was spoke to, to come over, or was *Eliaenor Vaneß* spoke to, and what was the Occasion?

A. My Lord ask'd him if he would speak the Truth, and do him any Service, and whether he would bring this Girl along with him.

Q. Who was it that spake to him?

A. My Lord Duke, and my Lord Howard.

Q. When was that?

A. It was about a Year ago.

Q. Where was he at that Time?

A. He was in *London*.

Q. Did he go over of his own Accord, or was he sent into *Holland*, who it was that sent for him over, and for what?

A. It was a Friend of his Acquaintance, that he desir'd, in case he heard of a Place, to send for him.

Q. Who sent for *Eliaenor Vaneß* over?

A. He

A. He says, that after he had promis'd my Lord Duke, and Lord *Howard*, to speak the Truth of what he knew, they desir'd him, that if he met with *Elianor Vaness*, to desire her to come over, and speak the Truth of what she knew.

Q. How long after did you meet with *Elianor Vaness*?

A. 'Tis about twelve Months since I met with her.

Q. When was the first Time that he spake to *Elianor Vaness*, about her coming over to speak the Truth?

A. 'Tis about a Year since.

Q. How long is it since they resolv'd to come over?

A. About twelve Months.

Q. Whether he was acquainted with *Elianor Vaness*, before he met with her in Sir *John Germaine's* Service?

A. He says never.

Q. You say you went from Sir *John Germaine's* Service in *Suffolk-Street*, and you say, when you came to him again, he liv'd in the Cock-pit. Did you find *Eleanor Vaness* there then?

A. He says he found her at the Cock-pit.

Q. When he waited on Sir *John Germaine* in his Chamber, who waited on the Dutcheß in her Chamber?

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A. There was *Susanna Barrington*, and *Elianor Vaness*.

Q. But who waited upon her in her Chamber?

A. *Susanna Barrington* did, to dress her.

Q. Whether he had seen any of *Sir John Germaine's* Relations in the Chamber, when this Lady and *Sir John Germaine*, were a-bed together.

A. Yes.

Q. Name them.

A. He says, he saw *Mrs. Brienne* and *Mr. Daniel Germaine* there.

Q. Did you see *Mrs. Judith* there?

A. He does not remember that he saw *Mrs. Judith* in the Room, while they were a-bed together, but the other he hath seen when they were a-bed together, but at different Times.

Q. Whether ever he hath seen the Dutch-ess at any other Place?

A. He has been at the Chapel with her, and else-where.

Q. Where?

A. At my Lord *Peterborough's*, and in her own House.

Cross-examin'd.

Q. I desire he may reduce this to a Certainty, what Time he went out of
England,

England, and look upon his Note again?

He look'd again upon his Note, and 'twas dated Eighth of February, One thousand six hundred ninety two.

Q. How long after this he went out of England?

A. He went away as soon as the Wind was favourable.

Q. Can he recollect the Time?

A. He says 'twas sometime before *Easter*, for he came into *Holland* about *Easter*.

Q. When he told his Grace the Duke of *Norfolk* and Lord *Howard*, he would be true to them, whether he was in any Service at that Time?

A. No, he was in no Service at that Time.

Q. How long had he been out of Employ?

A. He has none yet.

Q. But how long had he been out of Employ or Service, before he made this Proposal to the Duke or my Lord *Howard*?

A. He says he went away about the twenty seventh of *June*.

Q. Is it the same Year his Paper speaks of, that he spake to my Lord Duke?

A. No, 'twas not; he spake to my Lord Duke about twelve Months ago.

Q. But

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Q. But how long had he been out of Service when he spake to my Lord Duke; when did he leave Sir *John Germaine* the last Time?

A. 'Tis about three Years and half ago; 'twill be four Years in *June* next.

Q. Has he been in any Service since that Time?

A. No, he hath not.

Q. How has he liv'd since then?

A. He says, he has something of his own in his own Country, upon which he may subsist some Time.

Q. I think he said, he saw Sir *John Germaine* and the Dutcheſs in Bed together, in the Houſe where ſhe now lives?

A. Yes.

Q. Then I deſire he will tell, if he knows any of the Dutcheſs's Servants, that were about her at that Time?

A. Yes, he does.

Q. Then, that he will name them?

A. *Henry Keymer*.

Q. What's become of him?

A. They told him he was dead, and there was *Susan Barrington*.

Q. I deſire he will tell of ſome of the Servants that liv'd with the Dutcheſs at that Time, beſides that Perſon that is dead, and the other which is gone beyond-Sea, as they ſay?

Mr. Northy

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Mr. Northy answer'd, We don't say she is gone beyond-Sea.

A. He does not know any other.

Q. Then, that he will tell what Month he saw them in Bed together?

A. He can't remember the Month or the Day; but if they will ask him the Reason why he remembers it, he will tell it them.

Q. If you can come to any Certainty about the Time of the Year, or the Month?

A. He can't say the Month, or any particular Time.

Q. What Servant he saw in the House, or who let him in?

A. He had himself the Key of the lower Room, and could come in when he pleas'd

Q. Whose Servant was he at this Time he speaks of; whether he was a Servant to the Dutchess, or to Sir *John Germaine*?

A. He was Servant to Sir *John Germaine*?

Q. He was saying he could tell a Reason to fix the Time; let him recollect himself of the Time?

A. He can't remember the Time, but he came into the Room to bring a Clyster, and he was desir'd to stay without a little, 'till my Lady Dutchess got up.

Q. That

Q. That he may be positive whether he had a Key to the lower Room of the Dutchess's House.

A. He says he had a Key of the Door that goes into the Park, and he could come into the House by it, for it was the Key of the House.

Q. What Servant was it that brought him up, for that Key only let him into the lower Room?

A. Sometimes *Susan Barrington*, and sometimes *Henry Keymer*.

Q. What Room the Lady Dutchess lay in?

A. 'Tis a Room that looks into the Park.

Q. 'Tis not a Ground Room, I suppose?

A. No, 'tis up Stairs.

Q. How many Stories?

A. He can't tell what Degree it was.

Being ask'd that Question again, upon the Reading his Depositions, he says, he can't tell how many Stories; but if you please, he will describe the coming into the Room, as well as he can.

Q. Describe the coming into the Room?

A. That as you come upon the left Hand, there is a Way to go into the Dutchess's Room; when you have pass'd the little Chamber-Door, you go into a Place full of *China*; and after that, you come to the Dutchess's Bed-Chamber: On the other Side,

Side, going up Stairs, there is a little Room, where *Susan* told him she lay; and afterwards you come into a Room where the Chimney is, as he thinks, on the right Hand; and he thinks there are two Windows that look into the Street, he is not very certain; and in the Room upon the left Hand, there is a Door into a great Room, and from that great Room, you can go into my Lady Dutchess's Room. It was so at that Time, to the best of his Remembrance.

Q. How many Rooms are there upon a Floor?

A. There are a matter of four Rooms upon a Floor.

Q. Whether he has spoke with any Body that he knows is acquainted with this House, since he was examin'd here before?

A. He says, he has spoke to no Body since, that has given him any Account of the House.

Q. Which Side of the Park does the Windows of my Lady Dutchess's Room look into?

A. Towards the Pond where the Brass Statue is.

Q. Does the Bed-Chamber look towards the Brass Statue?

A. He durst not go to look out at the Window, for fear of being discover'd, but he could see the Water.

Q. Whether

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Q. Whether he knows the Horfe-Guards?

A. Yes.

Q. Whether he knows *Arlington House*?

A. Yes.

Q. Whether the Window does look towards *Arlington House*, or the Horfe-Guards?

A. He hath been there several Times, but 'twas not his Business to go to the Window, but when he was in the Room he could see the Water.

Q. Whether he could tell which way the Window look'd?

A. He did not live in the House, but went there sometimes upon Messages; and when he was there, 'twas not his Business to go to the Window, but he could see the Water when he was in the Room.

Q. Whether the Window was on that Side of the little Door that he came in, or on the other Side?

A. Upon the left Hand coming in; he says, he has explain'd himself as to the entering in, and he can say no more to it.

Q. Was it one or two Pair of Stairs that the Dutcheſs lay?

A. He can't be positive whether one or two Pair of Stairs.

Q. Who brought him up that Time he brought the Clyſter?

A. *Susan Barrington.*

Q. Who

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Q. Who told him at the Cock-pit, 'twas the Dutcheſs of *Norfolk*?

A. Sir *John Germaine*, herſelf, and the whole Houſe told him ſo.

Q. Did he before that Time know the Dutcheſs?

A. No.

Q. Did you never ſee other Women there beſides this Lady?

A. Yes.

Q. Did you know all the reſt that you ſaw there?

A. No, he did not know them all.

Q. Whether he was not told, the reſt of the Women were of great Quality too?

A. He never was told ſo, nor did he inform himſelf whether they were or no.

Q. At *Vaux-Hall*, and at the Cock-pit, I think he ſpoke as if he undreſs'd Sir *John Germaine* and the Dutcheſs; whether he undreſs'd them both?

A. Not the Dutcheſs.

Q. What Year it was they were at *Vaux-Hall*.

A. It was before he went to *Ireland*, and after he came from *Ireland*, but he can't preciſely tell the Time.

Q. Whether he has been in any Service ſince One thouſand fix hundred ninety fix, when he left Sir *John Germaine's*?

A. No.

Q. Whether

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Q. Whether, when he came about a Year ago into *England*, there was Application made to him, in order to make a Discovery, or whether he offer'd of himself to make it?

A. He never did offer himself.

Q. Who was it that first ask'd him the Question?

A. 'Twas my Lord *Howard*.

Q. Where did you meet my Lord *Howard*, and upon what Occasion?

A. He says, that 'twas that Person that he had address'd himself to, to get him into Service here, that was the Occasion of their meeting together.

Q. Did you know the Lord *Howard* before?

A. No.

Q. Where was the Place they met?

A. He call'd him to his House.

Q. My Lord, or that Person?

A. He says, that Person to which he address'd himself to get a Place, told him he had found one.

Q. Name that Person.

A. *Richardson*.

Q. Where does he live?

A. I don't know.

Q. Were you acquainted with him before?

A. Yes.

Q. Where

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Q. Where had you been acquainted with him?

A. At *London*, 'tis a Woman.

Q. Whether he can describe the Room, or the Furniture of the Room where this noble Lady and Sir *John Germaine* were a-bed together, where she lives now?

A. He cannot remember any thing of the Furniture.

Q. Was it hung or wainscoted?

A. He says he can't tell, and yet he was there often.

Q. Pray who was the Clyster for?

A. For Mr. *Germaine*.

Q. Where was it to be administer'd?

A. A-bed.

Q. Who was a-bed?

A. My Lady *Dutchess* was a-bed to.

Q. Was it to be administer'd at the same Time as he and the *Dutchess* were a-bed together?

A. No.

Q. Was the *Dutchess* there?

A. He laid the Syringe to the Fire-side 'till such Time as the *Dutchess* rose.

Q. Apothecaries are exact in Point of Time in making their Bills.

A. He says, I compos'd the Clyster myself, but he did not compose it at the *Dutchess's* House, but at Mr. *Germaine's*.

Q. Did you stay with Sir *John Germaine* 'till all was over?

A. No

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A. No, as soon as he had given it him, he went Home to Mr. *Germaine's* House.

Q. Whether he pretends to speak of any other Time that he saw the Dutchess in Bed with him at her House in *Duke-street*, but when he carry'd him the Clyster?

A. Yes, my Lord, he says he has.

Q. Let him tell the Times and Circumstances.

A. He says he can't very well remember the Times, but he had sometimes Business there to bring and carry Letters.

Q. When was that Time of the Clyster?

A. It was about two Months before he left them.

Q. Was that the last Time he saw them together?

A. That was the last Time.

Q. How long before that did he see them together?

A. Long before that Time in the same House.

Q. He says, he has seen Sir *John Germaine* and the Dutchess in Bed together elsewhere, did he never see them in Bed together at the *Mill-bank*?

A. He has seen them there two or three times a-bed together.

Q. When did your Master order you to prepare the Clyster?

A. He had Orders to come and wait for Mr. *Germaine* at the Dutchess's, and that
Mr. *Germaine*

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Mr. *Germaine* coming to the Dutchess's late, he order'd him to bring the Clyster next Morning.

Q. At what Time he came the next Morning?

A. He had Order to bring it at nine of the Clock, and he brought it at the appointed Hour, and he waited in the little Room where *Susanna* was, 'till he was call'd in.

Q. He says he waited for Sir *John Germaine*, by his Orders, at the Dutchess's, 'till it was late; which of the Dutchess's Servants did he keep Company with?

A. He says he remembers very well it was Mr. *Keymer*.

Q. Whether that Time that he saw Mr. *Germaine* and the Dutchess in Bed together at *Mill-bank*, if it was after the first Time he was sent out of *England*, when the Bill was depending before the Lords?

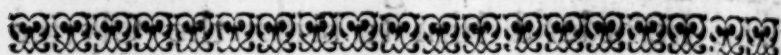
A. 'Twas after.

Q. What Year did you see them a-bed together at *Mill-bank*?

A. It was a Day or two before Mrs. *Davenant* dy'd. A Day or two before she dy'd, Mr. *Germaine* came to *Mill-bank*, and stay'd there about eight Days.

Nicola Hausseur.

DEPO-



DEPOSITIONS of *William Bayly.*

Die Sabbati 24 Februarii, 1699.

William Bayly sworn.

Q. **D**'YE know Sir *John Germaine* and the Dutcheſs of *Norfolk*?

A. Yes.

Q. Was you Servant to Sir *John Germaine*?

A. Yes.

Q. In what Capacity?

A. Three Years I wore his Livery, and three Years I was his Steward.

Q. When did you firſt come to live with him?

A. Three Weeks before the King was Crown'd.

Q. Was there any Converſation between Sir *John Germaine* and the Dutcheſs of *Norfolk*; d'ye know that they liv'd together, or kept Company one with another?

A. No, I never knew them live together, but ſeen them keep Company together, but never ſaw any Inſivility between them.

Q. Where ſaw you them in Company together?

A. I ſaw

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A. I saw them in Company in my Master's House.

Q. How long ago?

A. About five Years ago.

Q. Where did your Master then live?

A. He liv'd then where he does now.

Q. Did the Dutcheſs of *Norfolk* ever lie there?

A. Never, to my Knowledge.

Q. What was the Time ſhe uſually came there?

A. Commonly in an Afternoon.

Q. How often have you ſeen her there?

A. Two or three times.

Q. At what Time did ſhe uſe to come, and at what Time did ſhe go away again?

A. She uſ'd to come there about four or five a Clock in the Afternoon, and might ſtay there about two or three Hours.

Q. You are upon your Oath, and pray tell whether you ever ſaw them in Bed together?

A. By all that's Good I never ſaw them in Bed together?

Q. Did the Lady Dutcheſs uſe to come thither mask'd or unmask'd?

A. She uſ'd to come mask'd, but put it off when ſhe came into the Houſe.

Q. Who uſ'd to come with her?

F

A. There

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A. There us'd to come Mr. *Keemer* with her.

Q. What Company? did no other use to come with her to Sir *John Germaine's* House?

A. Yes, another Servant, Mr. *Carter*.

Q. Who was in the Room with them in Sir *John Germaine's* House?

A. Mr. *Keemer* stay'd commonly with them all the Time they din'd, and after Dinner, the other Servants and I were in the next Room to them; and commonly when they had Occasion, they would call Mr. *Keemer*.

Q. Was there no other Servant but Mr. *Keemer* that they us'd to call upon?

A. Yes, a Gentlewoman, Mrs. *Susan Barington*.

Q. Have you seen her lately?

A. No, not these six Months.

Q. D'ye know if your Master us'd to go to the Dutchess's House?

A. Yes, I have heard so, but I can't say so positively.

Q. Did you ever go with them to the Dutchess's House?

A. No, but I have gone with them as far as the *Horse-Ferry*.

Q. When was the last Time you saw them together?

A. I can't tell; I have been out of my Master's Service these four Years.

Q.

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Q. How long before you left your Master's Service, d'ye think it was that you saw them together?

A. I can't tell; but I think it might be about half a Year.

Q. He has gone with his Master as far as the *Horse-Ferry*, pray then let him be ask'd where he left his Master?

A. I left him at the *Horse-Ferry*.

Q. What Orders did your Master give you when you left him?

A. He order'd me to go home, and keep the House.

Q. D'ye know whither your Master was gone then?

A. I may judge he went to the Dutchess; but I can't swear he went there.

Q. Did Sir *John Germaine* come home to Bed that Night?

A. Some Nights he came, and some he did not.

Q. Did you carry Cloths to him at any Time?

A. I have carry'd Cloths for him to Mr. *Keemer*, the Dutchess's Servant.

Q. Where did *Keemer* live, when you carry'd the Cloths to him?

A. In a little Street going to the *Bowling-Alley*.

Q. Who did he live withal?

A. He told me he liv'd with the Dutchess,

but he was a House-Keeper, and had a House there.

Q. Did you always carry Cloths to Mr. Keemer for your Master?

A. Sometimes I carry'd his Cloths to Mr. Keemer, and sometimes Mr. Keemer came to me for them.

Q. Did you apprehend that your Master was then at the Dutchess's, or at Mr. Keemer's?

A. I can't tell where he was; how can I tell? I answer as punctually as I can.

Q. When Keemer came to you for Cloths, what Account did he give to you, where your Master was?

A. He gave me no Account.

Q. Whether did you ever see the Dutchess and your Master together at any other Place, but at his own House?

A. Never.

Q. When you carry'd the Cloths to Keemer's, did your Master lie at home that Night or not?

A. Sometimes he lay at home, and sometimes he did not; many Times my Master has been at the Dutchess of Mazareen's, from four a Clock this Day, 'till twelve the next.

Q. Repeat it again; for that's material?

A. My Master has taken his Chair at his own Back-door, at four a Clock on a Saturday,

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day, and not come home 'till *Sunday* at twelve a Clock.

Q. Where has your Master been at that Time, when he stay'd out all Night.

A. At the Dutcheſs of *Mazareen's*; and when he loſt his Gold, he has ſent home to me for more Gold.

Q. Did he ever ſend to you for any Cloths when he was there?

A. Never.

Q. D'ye know where he was when he ſent to you for Cloths?

A. No, indeed.

Q. D'ye know *Nicholas Hoſier*?

A. Yes, I know him very well; I ſaw him here juſt now.

Q. Did you know him when he waited on Sir *John Germaine*?

A. Yes, he ſucceeded me, and I ſucceeded him again.

Q. You was Foot-man when you went to Sir *John Germaine*; when was that, and what Year did you leave off your Livery, and ſerve him as his Steward?

A. I can't tell.

Q. He ſucceeded *Hoſier*, and *Hoſier* ſucceeded him; pray let it be aſk'd him, at what Time he came into his Maſter's Service, when he ſucceeded *Hoſier*?

A. 'Twas about the ſame Time that the Tryal was here before.

Q. How long was it ere *Hosier* return'd again to serve Sir *John Germaine*?

A. To the best of my Knowledge it was three Years; for I receiv'd and pay'd Money for my Master, and *Hosier* was away all that Time; *Hosier* won't deny it, if he were call'd in.

Q. You say that you succeeded *Hosier* at the Time when the Tryal was here, how long before that Time did you return to your Master's Service?

A. About three Weeks before the King was crown'd, I came to my Master, and serv'd him three Years, and wore his Livery; and he was pleas'd, after Mr. *Hosier* went away, to make me lay out his Money, to be Caterer for him, and to keep his Gold; and, to the best of my Knowledge, 'twas three Years before *Nicholas* succeeded me again.

Q. How long was it before he came back again to serve Sir *John Germaine*?

A. Before I saw him in my Master's House, and that he took my Place from me, 'twas three Years.

Q. Did you not see Mr. *Hosier* in England before that Time that you went out of your Master's Service?

A. No, I beg your Lordship's Pardon, I will recollect my Memory; for that as I have a Soul to be sav'd, now it is come into my Mind, my Master sent for *Nicholas* into
into

into *Holland* about a Year before *Nicholas* did come over; my Master told me before he came, that he would send for *Nicholas* again, and that I and *Nicholas* should have the Charge of his House. *Nicholas* came over, and we had the Play at our own House; *Nicholas* staid there some Time, but he did not like his Business, and so he went away again, because he could not have all the Money?

Q. About what time did *Nicholas* come into *England*, after the Tryal was before this House?

A. I can't resolve you.

Q. Had you no Certificate of Leave, or Discharge, when you left your Master's Service?

A. No, my Master was so kind, that he brought me immediately into the Excise, as soon as I was out of his Service.

William Bayly Cross-examin'd. *Lunæ 26. Februarii, 1692.*

Q. When you carry'd the Cloaths to Sir *John Germaine's*, was it the Time when you wore his Livery?

A. I carry'd no Cloaths to him when I wore his Livery.

Q. Had you any Discourse with the Dutche's's Agents since *Saturday Night*?

A. No, I have not seen them, nor don't know them.

Q. He says he saw the Dutchess of Norfolk at the Cock-pit, at Sir John Germaine's House where he now dwells; pray recollect yourself, that you may be positive as to the Time?

A. I can't resolve you as to the Year, 'tis so long ago; I believe it is about five Years ago.

Q. Can you be positive that it is not more?

A. To the best of my Knowledge 'twas about five Years.

Q. Can you be so far certain, that you can say 'twas not more?

A. I can't swear it was more; but I believe it may be five Year more or less.

Q. You say you saw her two or three times there, was it all in one Year, near the same Time or Month, can you reduce it to any Certainty?

A. I believe it might be in Summer.

Q. All in one Summer?

A. Yes, I believe all in one, to the best of my Knowledge, there was never a Winter between the Time that I saw her first and last.

Q. Did you know the Dutchess of Norfolk before that Time that you saw her in your Master's House, and took her to be the Dutchess of Norfolk?

A.

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A. I did not know her before the Tryal was here.

Q. Did you know her any Time after that Tryal, before the Time you saw her in Sir *John Germaine's* House?

A. I was not sure that it was she, only as I had it from *Mr. Keemer*.

Q. Then you don't undertake of your own Knowledge to say that it was she?

A. I can't swear that 'twas she, but as *Mr. Keemer* told me, I don't know whether I should know her now or not, 'tis so long since I saw her, I believe it is five Years, if not more.

Q. Did you see her before or after you saw her at Sir *John Germaine's* House?

A. The first Time they told me 'twas she, I met her in her Coach in the *Pallmall* with two other Gentiewomen with her, a little before the Tryal was here: I follow'd the Coach; and the Dutcheſs went into some Lady's House in *Dover-Street*, and they told me the Dutcheſs was the first Woman that went out; this is the first Time that e'er I saw her, that I know of, 'till such Time as *Keemer* told me 'twas she.

Q. Whether do you know *Nicholas*?

A. I know him very well.

Q. Can you tell how long it is since he came last into *England*?

A. No, he has been here two or three Times in *England*, since I left my Master.

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Q. How long before this Examination saw you him, or spoke with him?

A. I did not see him above these three Years.

Q. How long before you came hither as a Witness did you see him?

A. I have not seen him these three Years 'till I came hither to be a Witness, and did admire to see him here, that a Man that had got his Bread under his Master should appear here against him, it is so ungrateful a Thing.

Q. How came it that you had so much Curiosity as to follow the Dutcheſs's Coach?

A. I had a mind to satisfy my own Humour.

Q. Do you know how *Nicholas* liv'd since he was out of his Master's Service?

A. No, I never saw him, nor had any Account of him at all, nor have seen him these three Years 'till now.

Q. Did you know when *Nicholas* and *Elianor Vaneſſ* went out of *England*?

A. No, I neither knew when they went, nor when they came.

Q. Don't you know what Business he went out of *England* about, the Time you took his Place?

A. I know not the Business he went out of *England* upon.

Q. Did he at that Time tell you he was

was to get away to hide himself from coming hither?

A. No, I heard not one Word from him at the Time of his parting.

Q. What reason had you to say upon the first Sight of *Hauseur*, that he was ungrateful for coming hither?

A. I should think my self ungrateful to eat a Gentleman's Bread seven Years, and to do him all the Spite and Malice I could.

Q. Repeat those Words?

A. I should think myself very ungrateful to prosecute, if I should do any Harm to a Master that I had serv'd so many Years, I should think myself very ungrateful, let him think of himself what he pleases.

Q. He added some other Words?

A. For any thing I know it is Spite and Malice.

Q. Where did you live, when you follow'd the Dutcheſs's Coach?

A. At Mr. *Germaine's*.

Q. This Man is a Witness, and so is *Hofier*, let him explain himself what he means, and wherein there is any Difference between him and *Hofier*, for both are Witnesses?

A. I say, I should think my self very ungrateful, if I would do any harm to a Man whose Bread I had eat so long, and had got so much Money under him.

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Q What harm does *Hosier* do, being a Witness against the Dutcheſs of *Norfolk*, what harm is that to Sir *John Germaine*?

A. I don't know.

Q. D'ye reckon it ungrateful to ſpeak Truth to the Prejudice of a Maſter?

A. No, I would not ſpeak an Untruth for all the Maſters in the World.

Q. Where is there any Fault more in *Hosier* than in you?

A. I know not.

Q. Whether did *Elianor Vanefſe* live with Sir *John Germaine* when you liv'd there.

A. I know not who ſhe is.

Q. This Woman that was here as a Witness.

A. Yes, ſhe liv'd there.

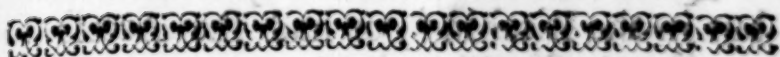
Q. What Time went ſhe away from Sir *John Germaine's* Service?

A. I know not, I cannot tell indeed.

Sign'd,

William Bayly.

Die



Die Martis, 5 Martii, 1699.

Council and Witnesses being call'd in for the Dutchess of *Norfolk*, (and the Duke's Council being present) the Examinations of the Witnesses, taken Yesterday in Short-Hand, and transcrib'd, were read to them, and Subscrib'd, (*viz.*)

Die Luna, 4 Martii, 1699.

Thomas Hawksworth Sworn, *Deposeth as followeth.*

Q. **D**O you know *Eliaenor Vaneß*? And did you live in the Dutchess of *Norfolk's* Family?

A. I came to live with the Dutchess about *October, 1691*, and left her in *September*, about two Years within two Months: *Eliaenor Vaneß* liv'd there when I liv'd there, and was Cook-maid.

Q. When did she leave the Dutchess's Service?

A. About the Beginning of *January*, or the latter End of *December, 1691*.

Q. On what Occasion went she away?

A. She was turn'd away, to the best of my Remembrance, for keeping Company with *Dutchmen*.

Q. Whe-

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Q. Whether used she any other Office but in the Kitchen? or had she Access to the Dutcheſs's Chamber?

A. Never; ſhe was not allow'd to come any higher than the firſt Floor: She uſ'd to clean that Room next the Street, one Pair of Stairs next the Door, and the Back-Parlour even with that, but was not ſuffer'd to come into the Dutcheſs's Chamber.

Q. Who waited upon the Dutcheſs in her Chamber?

A. *Frances Knight*; ſhe was conſtantly in the Dutcheſs's Chamber, and uſed to warm her Bed.

Q. You ſay that *Vaneſs* was allow'd to come no higher than the firſt Floor; explain that.

A. The Kitchen is under Ground backward; that Room *Vaneſs* clean'd was even with the Street, a Ground-Room; the Landry-maid clean'd the next Pair of Stairs.

Q. What was the Landry-maid's Name?

A. *Suſan*. She's dead.

Q. Do you know how long?

A. No.

Q. Did you ever ſee *Vaneſs* in the Dutcheſs's Chamber?

A. Never in my Life: I never heard ſhe was allow'd to come there.

Q. How long is it ſince you liv'd with the Dutcheſs?

A. About

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A. About six or seven Years, or very near it.

Q. D'ye remember the Bill that was brought into Parliament, against the Dutcheſs while you liv'd there?

A. I came to the Dutcheſs the *October* before that Bill was brought in.

Q. Was *Vaneſs* turn'd away before that?

A. She was gone a Month, or thereabouts before that.

Q. D'ye remember the Month?

A. To the beſt of my Remembrance, 'twas about the latter End of *December*, or the Beginning of *January*.

Q. Was there any Stir about the *Dutch* Foot-Soldiers haunting *Vaneſs*?

A. I never ſaw any, but have heard the Servants ſay they did.

Q. Can you ſay what Time it was? Was it before or after the Bill?

A. Before I heard any thing of the Bill ſhe was gone.

Croſs-Examin'd.

Q. Where do you live now?

A. With Sir *Thomas Barnardſton*.

Q. What Station were you in, when you liv'd with the Dutcheſs?

A. A Foot-man.

Q. Did you know *Hauſeur* then?

A. No.

Q. Where

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Q. Where did the Dutcheſs live when you came firſt to her?

A. Upon the Row between the *Horſe-Ferry* and *Mill-bank*.

Q. How long did you live there?

A. A Fortnight, or thereabouts, not much more.

Q. Do you know where ſhe liv'd before?

A. No

Q. Do you know Sir *John Germaine*? And, on the Oath you have taken, did he ever come to the Dutcheſs's **House** while you liv'd with her?

A. I never ſaw him in the **House**; I never ſaw any unhandſome Thing by the Dutcheſs all the Time I liv'd with her.

Q. Did you never ſee Sir *John Germaine* with her?

A. No, never; and I had the Privilege of the firſt Floor and the ſecond Floor, and help'd to rub the Rooms, and ſometimes I rubb'd the Lodging-Room.

Q. Had you the Privilege of going up Stairs in the Morning?

A. No, it was one *Peacock* that rubb'd the Room above Stairs.

Q. Did you know *Vaneſs*? Was ſhe Servant to the Dutcheſs when you liv'd there?

A. Yes, ſhe was.

Q. Can you be poſitive as to the Time of her going away?

A. As

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A. As near as I can tell, it was in the Beginning of *January*, 1692. I came in the *October* before, and she went away the *January* following.

Q. Were you by when she was discharg'd?

A. No.

Q. Who paid her her Wages?

A. I can't tell.

Q. Did you never see *Vane's* in the Dutches's Chamber?

A. Never.

Q. Did you attend at the Dutches's Chamber in the Morning?

A. Not constantly; we took it by Turns.

Q. Did you never attend in her Chamber when she was a-bed?

A. No.

Q. Who was it of her Women that attended in her Chamber?

A. *Susan* — *Frances Knight*, and *Susan Barrington*.

Q. When did you see *Susan Barrington* last?

A. About five Years ago.

Q. Did she constantly attend in the Dutches's Chamber?

A. She and *Mrs. Knight* carry'd Coals constantly to warm the Bed.

Q. How old was you when you liv'd with the Dutches?

A. About eighteen Years old.

Q. How old are you now?

A.

A. I think about Seven and twenty.

Thomas Hawksworth.



Die Luna, 4 Martii, 1699.

Jonas Peacock sworn, *Deposeth as followeth.*

Q. DID you live with the Dutcheſs of Norfolk in 1691?

A. 'Tis ſix Years ſince I left her Service laſt *January*, or thereabouts; I liv'd two Years and a half with her, or thereabouts. I came in *Auguſt*, and ſtay'd 'till *January* two Years following, or thereabouts.

Q. Did you live with the Dutcheſs, when the firſt Tryal, as they call it, came on in Parliament?

A. Yes, I liv'd with her before and after.

Q. Did you know *Vaneſs*?

A. I knew one, whoſe Name was call'd *Lena*.

Q. What was her Buſineſs?

A. Below Stairs in the Kitchen; I never ſaw her in any other Room, but the outer-Room next to the Street; and I was there all the while ſhe was there, and after ſhe was gone.

Q. Did you ever ſee her in the Dutcheſs's Bed-Chamber?

A.

A. No; the Work she was employ'd about, was dirty Work; I never saw her clean, but nasty, and could not eat the Vi-
tuals of her dressing.

Q. Was you there before *Vaneß*?

A. Yes, I was in the House some Time before her Grace came over, to help the Upholder, and to carry Looking-Glasses and Stands.

Q. Whence did she come over?

A. She came to *Mill-Bank*, but I know not when she came over; my Lady *Peterborough* order'd me to do what I did.

Q. Was you Servant there to the Dutches before she came over?

A. I never saw my Lady Dutches before she came there, except some Years before, at *Drayton*, when he liv'd with her.

Q. Who hir'd you?

A. I came there by the Lady *Peterborough's* Order, and had my Victuals at my Lord *Peterborough's*.

Q. Who hir'd you?

A. I was not hir'd at all.

Q. How long did you live at *Mill-Bank*?

A. I liv'd about two Years and a quarter, or somewhat more.

Q. What was your proper Business when you liv'd with the Dutches?

A. When the Dutches went abroad, I went with the Coach; and when she supp'd
or

or din'd at home, I laid the Cloth, Forks and Spoons.

Q. Did you ever wait above Stairs?

A. Yes, I have waited above Stairs.

Q. Who waited upon the Dutcheſs in her Chamber?

A. *Frances Knight*, one *Susan*, and one *Susannah*.

Q. Upon your Oath, Did you ever ſee this Woman, *Helena*, go into the Dutcheſs's Bed-Chamber?

A. I never once ſaw her there all the Time I ſtay'd there: I rubb'd the Bed-Chamber with a long Rubbing-Bruſh; I never ſaw her there, nor above Stairs.

Q. Do you know at what Time it was ſhe came to live with my Lady Dutcheſs?

A. Yes; ſhe came while I was there.

Q. Did you live with the Dutcheſs, before ſhe came to *Mill-bank*?

A. I liv'd at no other Place with the Dutcheſs, but at *Mill-Bank* and at *Drayton*.

Q. D'ye know how *Vaneſs* left the Dutcheſs's Service? and why?

A. Yes, Upon Complaints of Diſorders, and her ill dreſſing the Victuals.

Q. What Diſorders?

A. There were Men came to the Door to enquire for her, twice or more.

Q. Did you ſee the Fellows?

A. Yes, I ſaw the Fellows; they came to the Door in the Duſk of the Evening, and

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I acquainted the Dutchess with it, and told her Grace, I did not think it safe for her House, because I had the Charge of Silver Spoons and Forks.

Q. What Sort of Men were they?

A. One of them appear'd to me to be a Foot-Soldier, in a Blue Coat.

Q. In what manner was she put away, or left the House?

A. Upon these Complaints, the Dutchess said she would turn her away.

Q. Did you hear the Dutchess say so?

A. Yes.

Q. Was that before the Tryal at the Lord's House, or after?

A. To the best of my Remembrance, it was before the Tryal, the latter End of *December*, or the Beginning of *January*, but I can't be positive; I think 'twas the latter End of *December*.

Q. Did she go away before the Tryal or not?

A. I think before the Tryal, but I am not sure: Yes, at the Time of the Tryal, I remember another Cook.

Q. Are you sure of it?

A. Yes, I am sure of it; 'twas the Coachman's Wife, one *Gosling*.

Q. D'ye know *Hauseur*, or *Nicola*?

A. No.

Q. You liv'd at *Mill-Bank* two Years? D'ye know no such Man?

A. I

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A. I never heard his Name before ; I had no Acquaintance with him, nor never saw him about the House.

Cross-examin'd.

Q. Where d^y you live now ?

A. Near *Huntington* ; I board in a House there.

Q. How long have you been out of Service ?

A. Ever since I left my Lady-Dutcheſs.

Q. How d^y you live then ?

A. I board in a House ; I follow no Employment, but live on my own, except to teach Children, two, three, or four, out of Charity.

Q. When came you to the Dutcheſs's Service first.

A. I serv'd her about ten or twelve Years ago, but I can't remember the precise Time, 'tis so long since.

Q. How long did you live with her then ?

A. I liv'd with her about half a Year at *Drayton*, in *Northamptonſhire* : I went about *November*, and stay'd till *Lady-Day* following.

Q. How long was it before you came to live with her the last Time ?

A. I can't tell.

Q. You

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Q. You say you came to live with her about two Years and a Quarter : What Time was that?

A. I can't tell, but that may be easily found : I liv'd with her about six Years ago, or thereabouts.

Q. How long did you leave the Dutcheſs, after the Hearing came on in this Noble Houſe ?

A. I don't know ; it was about a Year and three Quarters, or two Years, I can't be poſitive.

Q. Was it after the Tryal began ?

A. Yes ; I think the Tryal began in January, and 'twas a Year after it began ?

Q. Can't you be poſitive what Time you came to live with the Dutcheſs ?

A. I came about *Auguſt* to *Mill-Bank*, but the Dutcheſs was not come then ; but the *October* following my Lady Dutcheſs came ?

Q. Where did the Dutcheſs live then ?

A. I don't know ; I was at the Lady *Peterborough's* ; I help'd her Servants to carry Things, and to get Things ready.

Q. Did you know where the Dutcheſs liv'd then ?

A. No ; ſome ſaid ſhe liv'd in *Flanders*, others in *Holland*, and ſome in *France*.

Q. Was you never at *Vaux-Hall* while the Dutcheſs liv'd there ?

A.

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A. I was never there while the Dutchess liv'd there, if she did live there.

Q. Was you never there where she did live?

A. When no Body liv'd there, I have seen the House where they said she did live.

Q. How long ago is that?

A. I know not how long ago; but 'twas in the Summer-time.

Q. How came you to take Notice of that House, more than the rest of the Houses in *Vaux-Hall*? Who was it told you the Dutchess liv'd there?

A. I think it was one that was —

Q. You said the Dutchess went sometimes by Water: Did you go along with her at that Time?

A. Yes, I did, with some other Company.

Q. Was you ever sent to the House, to fetch Goods from thence?

A. No.

Q. Who went with you, when you went with the Dutchess there?

A. One Mrs. *Boufflers*, and two or three other Ladies.

Q. D'you know Sir *John Germaine*?

A. I never saw him, but in his Coach, as he was going along the Street; I never saw him in any House, or any other Place, sitting or going, but in his Coach.

Q. Was

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Q. Was you never at his House?

A. I never was at his House, nor at any Place where he liv'd.

Q. You say you were admitted to the Dutchess's Chamber, to rub the Room?

A. Yes, I was.

Q. Did you not see *Vaneß* there?

A. No.

Q. Can you take it upon your Oath, that you never saw her there?

A. No, I never saw there, but I saw *Susan Barrington* there.

Q. What Service did *Susan Barrington* do there?

A. She help'd to dress and undress her Grace, and to mend Linnen, as I think.

Q. When saw you her last?

A. 'Twas about the 9th, 10th, or 11th of *August* last, at the *George-Inn* in *Huntingdon*.

Q. D'you know where she liv'd then?

A. She was at *Huntingdon* then, and came with the Lady-Dutchess to take a Stage-Coach for *London*: She was at the *George-Inn*, in *Huntingdon*, I think, about *August* last.

Q. You say you liv'd at the Dutchess's House at *Mill-Bank*, before the Dutchess came thither: Did *Vaneß* come with her, or was she hir'd after?

A. I think she came with the Dutchess.

G

Q. D'ye

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Q. D'y'e know whence the Dutcheſs came, when ſhe came there?

A. As I have heard, ſhe came from *Vaux-Hall*: When my Lady-Dutcheſs went thither by Water the Summer after, I was told, that my Lady liv'd at ſuch a Houſe in *Vaux-Hall*.

Q. Didn't you know that my Lady-Dutcheſs liv'd at *Vaux-Hall*?

A. I never knew my Lady-Dutcheſs 'till ſhe liv'd at *Mill-Bank*.

Q. What Account had you, at the Dutcheſs's Houſe, where ſhe was then?

A. People ſaid ſhe was in *Flanders*.

Q. D'you know when *Vaneſs* came to live with the Dutcheſs?

A. I believe ſhe came to live with the Dutcheſs at *Mill-Bank*.

Q. D'you know when ſhe was diſcharg'd out of her Service?

A. I think 'twas the latter End of *December*, or the Beginning of *January*; I think ſo, but I don't ſpeak poſitively.

Q. Was you by, when her Wages were paid?

A. No.

Q. Have you ever ſeen her ſince?

A. No; I never ſaw her from that Hour to this.

Q. Where have you liv'd ſince you left the Lady-Dutcheſs's Service? And how? Have you any Eſtate?

A. I

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A. I have a small Matter to live on; I live near *Huntingdon*; I was born near there, 'tis my Native Place; I have liv'd there about four or five Years, or within seven Miles of that Place, or thereabouts.

Q. Did *Vaness* dress the Dutchess's Dinner when she liv'd there? for it seems she was not good enough to serve you.

A. Yes, she did dress the Dutchess's Dinner, but I did not care to eat Victuals of her dressing.

Q. When did you first complain to the Dutchess, that Men follow'd *Vaness*? Or that you apprehended Danger by her being there?

A. I can't tell.

Q. Was she discharg'd immediately after that?

A. I think she was discharg'd in a very little Time after.

Q. You say there were some other Ladies that went with the Dutchess to *Vaux-Hall*; Can you name them?

A. Mrs. *Marshall*, and some others, but I can't be positive.

Q. Did you know Mrs. *Briane*?

A. No; I never heard her Name before.

Q. Did the Dutchess eat always at *Peterborough-House*, or *Mill-Bank-House*, as you call it?

A. Sometimes she eat Abroad, and sometimes at Home.

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Q. Who dress'd her Victuals when she eat at Home?

A. *Lena.*

Q. What d'ye mean by *Mill-Bank-House*?

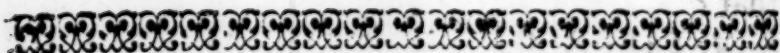
A. *Peterborough-House.*

Q. Who did you hear say, the Dutcheſs liv'd at that House at *Vaux-Hall*?

A. The Dutcheſs was going by Water, and told the Ladies then, that that was the House she had liv'd at, at *Vaux-Hall*; and walking in the Garden of the ſaid Houſe, told 'em ſo.

Sign'd,

Jonas Peacock.



Die Luna, 4 Martii, 1699.

Frances Knight Sworn, Deposeth as followeth.

Q. **H**OW long have you liv'd in the Dutcheſs of *Norfolk's* Family?

A. Twenty seven Years, or upwards.

Q. With whom did you live all that Time?

A. With the Lady Dutcheſs's Father, the Lady *Peterborough*, and the Dutcheſs.

Q. Did

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Q. Did you live with the Dutcheſs when ſhe liv'd at *Mill-Bank*?

A. Yes, I liv'd with her at her firſt coming there.

Q. Have you been with her ever ſince?

A. Yes.

Q. Did you know *Vaneſs* in the Dutcheſs's Family at *Mill-Bank*, and what Employ ſhe had there?

A. Yes, I know her very well: She was in the Kitchen.

Q. Did you uſe to be in the Dutcheſs's Bed-Chamber, and about her Perſon.

A. Yes; I was the firſt in the Morning there, and the laſt at Night, conſtantly.

Q. Did you know *Eleanor Vaneſs* there? And did ſhe uſe to come into the Dutcheſs's Chamber?

A. She never came there.

Q. Where uſ'd ſhe to employ herſelf?

A. In the Kitchen.

Q. Was ſhe well enough in Cloaths, cleanly enough, and fit to come into the Dutcheſs's Chamber?

A. No, ſhe was not.

Q. What Time went ſhe away? And upon what Account?

A. My Lady put her away, becauſe Soldiers came and aſk'd for her, and ſent for her to Ale-houſes about Ten a Clock at Night. I went up one Morning, and complain'd of her to my Lady-Dutcheſs, and

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told her that Soldiers-haunted her, ask'd for her, and sent for her to Ale-houses at ten a Clock at Night: And my Lady Dutchess said, she would not keep a Servant that kept ill Hours.

Q. Was this before the Tryal?

A. Yes, my Lady put her away upon my speaking this.

Q. Do you know why she was put away?

A. Yes, for having Soldiers haunt her Company.

Q. Consider well what you say.

A. Yes, my Lords; I speak what my Conscience tells me: Here I am before the Lords, I must speak Truth.

Q. How far can you recollect your self, if it was before the Tryal, or not, that she was put away.

A. It was before the Tryal.

Q. How long?

A. I can't remember; I think it was about a Quarter of a Year, I can't tell exactly, but it was near upon.

Q. How near was you to the Dutchess? What was your Employment?

A. I help'd to get her to Bed, as her Chamber-Maid.

Q. Did *Eleanor Vaneß* never undress her?

A. No, never in this World.

Q. Did you never know her come into the Dutchess's Chamber?

A. Never,

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A. Never, never. Oh, fie! Never, indeed.

Q. D'ye know *Nicholas Hausfeur*?

A. I don't know him: There were many ask'd for Mr. *Keemer*, but I did not know them, for he has many Acquaintance.

Q. Did you know *Thomas Hawfworth*, your Fellow-Servant?

A. Yes, he came when my Lady came to *Mill-Bank*, Mr. *Peacock* came before, they were both Servants together.

Frances Knight *Cross-Examin'd.*

Q. You say you liv'd Twenty seven Years and upwards with the Dutcheſs, and her Mother? Do you live with the Dutcheſs ſtill?

A. Yes.

Q. How long is it ſince you liv'd with her Mother?

A. After the Dutcheſs was marry'd, I came to live with her and my Lord-Duke.

Q. Have you been in her Service ever ſince.

A. Yes.

Q. After the Duke parted with my Lady-Dutcheſs, where did ſhe go to live?

A. She liv'd at *Mill-Bank*, and no where elſe that I know of.

Q. Came you to live with her ſoon after
G 4 her

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her Marriage? And have you liv'd with her ever since? And did she ever live at *Vaux-Hall*?

A. I never liv'd with her at *Vaux-Hall*.

Q. Then you have not liv'd with her ever since?

A. I have liv'd with her ever since, I have taken my Oath, and as near as I can tell you.

Q. Where did the Dutcheſs live before ſhe came to *Mill-Bank*?

A. She liv'd at *Vaux-Hall*.

Q. Did not you live with her there?

A. No; I broke my Leg, and was brought Home to her Mother's, and ſtay'd there a Twelvemonth; Mr. *Peters* was my Surgeon, he can tell it. I came here to ſpeak the Truth.

Q. Don't be angry.

A. No.

Q. Did you continue with the Dutcheſs 'till you broke your Leg?

A. Yes; and when I broke my Leg, I went Home to her Mother's.

Q. When left you the Dutcheſs, after ſhe parted with my Lord-Duke?

A. I left her at *Mill-Bank*.

Q. Do you know the Question that's ask'd? When did you leave the Dutcheſs after ſhe parted with the Duke?

A. I know no ſuch Questions as you ask. I ſpeak the Truth, as well as I can.

Q. Where

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Q. Where did my Lady - Dutcheſs go, when you left her?

A. I went away Lame, and could do her no Service.

Q. Where did you come to my Lady-Dutcheſs again, when you were well.

A. At *Mill-Bank*.

Q. Was you ever with her at *Vaux-Hall*?

A. I was not there, becauſe I was Lame.

Q. Was you ever at *Vaux-Hall*?

A. I told you I broke my Leg.

Q. Was you ever at *Vaux-Hall*, or not?

A. I tell you, I was Lame.

Q. Was you ever at *Vaux-Hall* at any Time?

A. I tell you I was Lame; I give you an Answer to your Queſtion. I tell theſe Noble Lords, that every Word I ſpeak is Truth.

Q. But you are Swore to ſpeak the whole Truth.

A. I ſpeak the Truth. Why ſhould you do ſo?

Q. Was you ever with the Dutcheſs at *Vaux-Hall*?

A. I was not able to be there with her.

Q. Was you there with her, or not?

A. I was not able to go thither.

Q. Was you never there?

A. I was not able to go thither.

Q. Was you ever there or not, with the Dutcheſs?

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A. No, I never was at *Vaux-Hall* in my Life, but at *Mill-Bank* and *White-hall* I have. [*Memorandum*, in this Interlineation was alter'd, upon reading over her Examination, *Yes, I have been there, but I did not stay there.*]

Q. Was you ever there with the Dutchess, or not?

A. I was not there: I tell you I was not there, I was *Lame*.

Q. Was you never there with the Dutchess at any Time?

A. No, I tell you I was *Lame*: I was never there with the Dutchess.

Q. Where was the Dutchess before she came to *Mill-Bank*?

A. That I can't tell.

Q. Where was she when you broke your Leg?

A. I left her at *Mill-Bank*, with her Mother.

Q. Where did you find her, when you came again?

A. I found her at her Mother's.

Q. Can't you tell where she was in the mean Time?

A. No.

Q. Was you never told by any of the Family, where she was at that Time?

A. No.

Q. Did *Vaness* come to the Dutchess when she liv'd at *Mill-Bank*?

A. Yes.

A. Yes.

Q. How long did she live with her after?

A. I can't tell; but a short Time.

Q. Do you know *Susan Barrington*?

A. Yes.

Q. When did you see her last?

A. About three Weeks ago.

Q. Is she not in the Dutchess's Service, still?

A. I'll tell you the Truth; She receiv'd a Letter from *Flanders*, acquainting her that her Mother was dead; she was very much afflicted with it; and when the Dutchess came in, I told her Grace, that *Susan* had receiv'd a Letter that her Mother was dead, and I did desire my Lady to give her Leave to go to *Holland*, and she's there.

Q. Did you see the Letter?

A. I saw it.

Q. Was it from her Mother, or from her Sister?

A. Yes, 'twas from her Sister, That her Mother was dead.

Q. Was *Susanna Barrington* in the Dutchess's Service, when this Bill was depending?

A. No.

Q. How long is it since you receiv'd that Letter?

A. 'Tis about three Weeks ago.

Q. How long is it since she went.

A. A Fortnight, to Day.

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Q. Did you see her at any Time since these three Weeks?

A. No, No.

Q. Did you not live with her in the House? And did you not see her?

A. She has been gone about a Week.

Q. D'ye know Mrs. *Judith*?

A. No.

Q. D'ye know Mrs. *Briane*?

A. I have heard of her Name, but am not acquainted with her.

Q. Had you any Discourse with *Vaneß*, when she came to *Mill Bank*, to live with the Dutcheßs?

A. No, I never lik'd her Discourse.

Q. Did you ever hear the Dutcheßs say that she liv'd at *Vaux-Hall*?

A. No.

Q. Do you know Sir *John Germaine*?

A. I know him by Sight.

Q. Did you ever see him at the Dutcheßs's?

A. No.

Q. Did you never see him at *Mill-Bank*, or at her House here?

A. No, my Lords, never.

Q. Did *Vaneß* come along with the Dutcheßs when she came to *Mill-Bank*? Or was she hir'd after her Return?

A. She came after her Return to *Mill-Bank*.

Q. What Time went she away?

A. I can't tell the Day; that's a hard Question.

Question. She went away on my speaking to the Dutcheſs, that ſhe was haunted with bad Company.

Q. Did not ſhe dreſs the Dinner, when the Dutcheſs din'd at Home.

A. Yes; but ſhe never din'd at Home but very ſeldom.

Q. Can't you tell when *Vaneſs* went away?

A. No.

Q. Did you know *Nicholas Hauſeur*?

A. No, I know no ſuch Man. There were many People came to Mr. *Keemer*, Lords Servants, and others, I don't know ſuch People.

Q. You have heard that the Dutcheſs liv'd at *Vaux-Hall*.

A. Yes.

Q. At what Time did ſhe live there?

A. I can't tell you; I was ſick in Bed.

Q. You may recollect, about what Time was it?

A. I was lame in *March*, this Month: I can't tell what Year.

Q. D'ye know what Houſe ſhe liv'd in?

A. Yes; 'twas one Sir *Thomas Groſvener's*, at *Mill-Bank*.

Q. I aſk you what Houſe ſhe liv'd at, at *Vaux-Hall*?

A. I know not.

Q. How came you to know the Dutcheſs liv'd at *Vaux-Hall*?

A. You aſk what I can't tell you.

Q. You

Q. You daren't tell.

A. Yes, I'll tell the Truth, before all the House of Lords.

Q. You said she liv'd at *Vaux-Hall*?

A. No, I never said it.

Q. Whence came the Dutcheſs, when she came to *Mill-Bank*?

A. She came from the Place she did; I did not ask her the Question, I durst not be so bold.

Q. Can't you tell when she came to *Mill-Bank*? Nor from what Place she came?

A. I can't tell the Day when she came. I don't ask from what Place People come.

Q. When did you know Sir *John Germaine* first?

A. I saw him first with my Lord-Duke there, at his House in the *Square*.

Q. Did you never know him keep Company with the Dutcheſs?

A. No, but only with the Duke of *Norfolk* there; I speak in the Presence of God.

Sign'd,

Frances Knight.

Dis



Die Luns, 4 Martii, 1699.

William White sworn, Deposeth as followeth.

Q. DID you live with the Dutches of Norfolk for some Years past?

A. I liv'd with her since the first Week of the first Tryal, about six, or seven, or eight Years ago.

Q. What Care was there taken about the Dutches's Door into the Park?

A. I generally went out the first in a Morning; the Door had two Bolts, a Cross-Bar, and an Iron Chain; besides, these I unbolted every Morning, and unbarr'd, when I went out early.

Q. Did you ever hear or understand that *Hausieur* had a Key to that Door?

A. I never knew any thing of it, nor know not of what Use it could have been; for he could not come in 'till the Door was unbolted.

Q. Say positively, whether ever you heard that this Man had a Key to that Door.

A. I never heard it.

Q. Did you ever see him come in at that Door?

A. Yes.

Q. How?

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Q. How? Upon what Occasion?

A. I happen'd to be going out my self, and to open the Door for him. His Business, I was told by my Lady-Dutchess's Maid, was, That she had lent Money to a Man in *Holland*, and she wrote a Letter, to be carry'd by this Man to her Sister, to get the Money; and she sent another Letter by one *Bull*, to carry to *Holland*, to get the Money, as she told me.

Q. Did you let him in?

A. I unbolted the Door, and let him in.

Q. Did you find that this Man us'd to come freely to the House, at that Door, by any Key?

A. No, I never knew it.

Q. Who did he come to?

A. To *Susan Barrington*.

Q. Did you ever see him above Stairs with her?

A. No, he might come in, and I not see it.

Q. Did the Dutchess or Servants say any thing that he had Leave to come in?

A. I never examin'd that; because any Body that had Business, had Leave to come in, as Tradesmen, and others.

Q. Did they tell you in the House, that *Hausieur* was at Liberty to come into the House with a Key?

A. No, never.

Q. Had you ever any Discourse with *Hausieur*?

A. I

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A. I was one Day coming from *Change*, and met Mr. *L'Estrange*, and this *Hausieur*. *L'Estrange* told me that he was ill of the Gripes. I told him, that the best Thing for it was *Burnt-Claret*; and he and I and *Hausieur* went to a Tavern in *Smithfield*: And while we were together, *Hausieur* reflected upon his Master, saying, his Master had us'd him ill, and deserv'd to be ill us'd. Mr. *L'Estrange* heard these and some more Words; and Mr. *L'Estrange* told me, that he spoke to that Purpose, he was resolv'd to be reveng'd of his Master.

Q. What did he say of his Master?

A. He said, his Master had us'd him very ill; he had many threatning Words; he said his Master was an ill Man, and deserv'd to be ill us'd, and the Time would come when he should repent it.

Q. When did he say these Words?

A. 'Twas about *Michaelmas* two Years ago, or a Year ago, I can't tell which.

Cross-Examin'd.

Q. You say, you liv'd with the Dutcheſs the first Week of the first Tryal; was *Vaneſs* there at that Time?

A. She was gone before I came.

Q. How long?

A. I can't tell; I never saw her there, to the best of my Remembrance, but have heard

heard there was such a one in the Family.

Q. Did you know *Hauseur*?

A. I see him come in at the Back-Door.

Q. Whose Servant was he then?

A. The first Time I did not know; but a little after, I was told he was Sir *John Germaine's*.

Q. What Occasion had he to come to the Dutcheſs's Houſe?

A. I know not, but about the Buſineſs of the Letter.

Q. How often did you ſee him there?

A. Two or three times, or more.

Q. With whom?

A. With *Suſan Barrington*.

Q. What was his Buſineſs with her?

A. About the Money, as ſhe told me. He went along with that Woman; ſhe ſent a Letter by him; and ſhe ſent Letters by ſome other *Dutchmen*, into *Holland*, about the Money.

Q. Did he aſk for any other Servant?

A. Not that I know of.

Q. Did you ſee him above Stairs with her?

A. I never ſaw them in any Apartment but that Place below, where the Lumber is, near the *Park-Door*.

Q. D'you know *Suſan Barrington*?

A. I know her very well.

Q. D'you know where ſhe is now?

A. Her

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A. Her Mother dy'd about the 10th of *January*, and then I saw her all in Tears, and she went away, after this Account of her Mother's Death.

Q. When did you see her last?

A. I have not seen her this Fortnight or Month, that I know of, that I could distinguish her from another Woman, except she had a Mask on.

Q. How long before this Tryal saw you her?

A. About a Fortnight. She gave me an Account that her Mother dy'd the 10th of *January*, in *Holland*.

Q. When did she go away?

A. I did not take Notice of the Time she went away.

Q. Did you know *Hanseur* at any other Place but at the Lady-Dutchess's?

A. Never, but as I have seen him in the *Park*, and with *Mr. L'Estrange*.

Q. Was you never with him at *Sir John Germaine's*.

A. Never.

Q. D'you know *Sir John Germaine*?

A. After I had liv'd with the Dutchess some time, I was told by some in the Street, that that was his Coach, and his Livery; and that he was the Man that there was so much Noise about.

Q. Did you never see him in the Dutchess's House?

A. I

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A. I never saw him in no Part of my Lady - Dutcheſs's Houſe, nor in no Apartment; and I am the only Man that goes up and down Stairs.

Q. Did you never ſee him in the Dutcheſs's Company at any other Place?

A. No.

Q. Did you conſtantly lie at the Dutcheſs's Houſe?

A. When the Dutcheſs was laſt at *Drayton*, I lay at *Richmond* two or three Nights.

Q. Did you lie conſtantly there, when the Dutcheſs was there?

A. I was ſick near a Month, and all that Time I lay at my Wife's; but moſt commonly lay at the Dutcheſs's, ſince ſhe is come to *Duke-ſtreet* to live.

Q. You ſay, you uſ'd to open the Door in the *Park*, firſt in the Morning: What time did you uſe to open it at?

A. At ſix, ſeven, or eight a Clock in a Morning; there was no certain Hour, but I generally open'd that Door.

Q. Did you ever know *Hauſeur* come in at any other Door but that?

A. Yes; one wet Day he came in at the Street-Door, before the Porter, and all the Servants, and aſk'd for the ſame Woman.

Q. Did he never aſk for any other Body?

A. I never heard him aſk for any but *Suſan Barrington*, for ſhe was his Country-Woman.

Q. If

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Q. If *Nicholas* got in at the *Park-Door*, could not he get up Stairs?

A. If he could get in at that Door he talks of, he could not get into the Dutchess's Apartment; for there was a Room betwixt that, where the Plate and Jewels lay, that no Key could open; that if he could get up two Pair of Stairs, he could not get in there.

Q. If he had a Key, and got in at any Door; could not *Susan Barrington*, when he came in, without any Difficulty, lead him round the House.

A. I can't say but she might; but I never saw him but below Stairs with that Woman, and then he went away without going up Stairs.

Q. Did you never see him bring any thing to the House?

A. No.

Q. You nam'd one *L'Esrange*, that you saw with him at the Tavern; What is he?

A. He was my old Fellow-Servant at the late Duke of *Norfolk's*.

Q. What Discourse had you with him then?

A. He complain'd to me of his being ill, and I gave him the best of my Advice.

Q. What Time was it that *Nicholas* had those threatening Words against his Master?

A. About

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A. About ten, eleven, or twelve a-Clock at Noon.

Q. How long ago is it?

A. I can't tell if it be a Year, or two Years; 'twas a little after *Michaelmas*; but whether it be one Year or two Years, I can't tell.

Q. Could not Mr. *L'Estrange* tell?

A. I ask'd Mr. *L'Estrange*, and he could not tell.

Q. Whose Servant was *Nicholas* then?

A. He was no Body's Servant then. He rail'd against his Master at that Time for turning him away.

Q. Did you not know who was his Master a Year or two ago?

A. He told me he was out of Place.

Q. Did you not know him to be Sir *John Germaine's* Servant, when he came to the Dutchess?

A. I did not know it, when I first saw him and *Susan* together; but some time before he went away, I heard he was his Servant.

Q. But you say, you did not know Sir *John Germaine* about two Years ago.

A. I did not know him, so as to speak to him.

William White.

~~~~~: ~~~~~: ~~~~~

*Die Luna, 4 Martii, 1699.*

Matthew Mac-Dondell Sworn,  
*Deposeth as followeth.*

*Quest.* **H**OW long have you liv'd with  
the Dutcheſs of *Norfolk*?

*Anſw.* Four Years, at *Lady-Day* next.

*Q.* In what Manner was the Door going  
out to the *Park* kept? Had any Body a  
Key to it, that was not of the Family?  
Did it use to be left open?

*A.* 'Twas not to be left open; 'twas  
very unsafe to be left open: Besides, it  
was bolted and lock'd.

*Q.* Was there particular Care taken of  
that Door?

*A.* Yes, I my self bolted it very often  
at Night.

*Q.* Did you often unbolt it in a Mor-  
ning?

*A.* Yes.

*Q.* Whether or not, the Time that you  
liv'd there, did you know any Body, that  
was not of the Family, come with a Key  
to open that Door?

*A.* Never.

*Q.* Did you know *Hausſeur* or *Nicholas*?  
Had he a Key to that Door?

*A. I*

*A.* I never knew it.

*Q.* Did you ever see him come in at that Door?

*A.* I open'd that Door for him once or twice, when he rung.

*Q.* When was that?

*A.* In an Evening.

*Q.* What did he come about?

*A.* I do not know; but he ask'd for *Susan*, my Lady-Dutchess's Servant.

*Q.* Did you ever see him go up Stairs?

*A.* I never did hear he went up in my Life.

*Q.* When he ask'd for *Susan*, did he go up then?

*A.* No, I call'd her to him, and I never saw him go up Stairs.

*Q.* Did you stay with him all the while *Susan* was with him?

*A.* No, I had no more Business, I went my way.

*Q.* Was *Nicholas*, when he rung, in the Park, or at the inner Door?

*A.* In the Park.

*Cross-Examin'd.*

*Q.* Did you know whose Servant *Nicholas* was?

*A.* I did not know, nor I ask'd no Questions.

*Q.* How



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Q. How often have you seen him at the Dutcheſs's?

A. Three times.

Q. Did he always ask for *Susanna Barrington*?

A. One time he ask'd for *Mr. Keemer*.

Q. Who was *Mr. Keemer*?

A. He was the Dutcheſs's Servant.

Q. Did you use to stay with him, or did you leave him?

A. No; to tell you the plain Truth, I thought he came to court *Susan*, and did not stay with him.

Q. Did you ever see him up Stairs in *Susan's* Room?

A. I never saw him there.

Q. What Employment have you under the Dutcheſs?

A. I am her Footman.

Q. When did you see *Susan* last?

A. On *Tuesday* Sev'n-night, in the Morning.

Q. Not since?

A. No.

Q. Where did you see her then?

A. At the Dutcheſs's House.

Q. What became of her after that?

A. She said her Mother dy'd lately in *Holland*, and she was going there.

Q. When did you hear her say so?

A. I heard her say so several times before she went away, a Month, or a Quarter

H

ter

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ter of a Year before she talk'd of going to *Holland*.

Q. Upon your Oath, don't you know that she is at the Dutchess's?

A. I know not of her being there.

Q. Can you take it upon your Oath, when she was first wanting?

A. I saw her on *Tuesday* Sev'n-night last, in the Morning.

Q. How came you to know she was gone, if you don't know the Time when she went?

A. I did not know she was gone, 'till I went Home from the House here.

Q. Who told you she was gone?

A. The Servants.

Q. She was there when you came hither?

A. On *Tuesday* Morning I did see her.

Q. Has the Dutchess another in her Station?

A. There is one *Mrs. Cambell*, that dresses my Lady-Dutchess, but she does not live there.

Q. Did she use, in *Susan's* Time, to come and dress the Dutchess?

A. Yes, she us'd to come sometimes.

Q. Has the Dutchess taken any Body to do *Susan's* Work?

A. I know not of any.

Sign'd,

Matthew † Mac-Donnel.

Die



Die Luna 4 Martii, 1699.

Mr. Robert Welburne Sworn,  
*Deposeth as followeth.*

*Quest.* **W**Hat Account can you give of  
Mr. *L'Estrange's* having No-  
tice to be a Witness?

*Ans.* I was told by the Dutcheſs, that  
*L'Estrange* had been with her, and gave her  
an Account of ſome Particulars between  
*White*, and him, and *Nicholas*: That having  
the Griping in the Guts, they went into a  
Tavern together: That he heard *White* and  
*Nicholas* talk together very loud; but he  
told me he had the Gripes, and could not ſo  
well mind what he ſaid, but he heard him uſe  
hard Words againſt his Maſter, but he could  
not remember that he ſaid he would be re-  
veng'd upon his Maſter; but he would re-  
collect himſelf, and if he could remember,  
he would ſay what he could. He told me,  
he had been bred in the *Norfolk* Family.

*Q.* Did you ask Mr. *L'Eſtrange* about this  
Matter?

*A.* Yes. Mr. *L'Eſtrange* told me, he re-  
member'd they were together, and heard  
*Nicholas* ſpeak very hard, ill Words againſt  
his Maſter, but he could not be poſitive

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what they were; but what he could remember, he would speak, if that would do the Dutcheſs any Service. He deſir'd my Lady-Dutcheſs would give him Notice the Night before, and he would appear.

Q. When was this?

A. 'Twas Tuesday or Wednesday; I think 'twas Wednesday.

*Croſs-Examin'd.*

Q. Did the Lady-Dutcheſs tell you what Mr. L'Eſtrange ſaid?

A. Yes; that gave me the Occaſion to ſpeak of it. He ſaid, he heard *Nicholas* ſay hard, ill Words againſt his Maſter; but not that he heard him ſay he would ſtudy to be reveng'd. Perhaps, ſays he, there might be ſome other Words. That he was in the Kitchen, and would endeavour to recollect who was there beſides; and if he had two or three Days time, he would enquire.

Q. Did you let him know that you was concern'd for the Dutcheſs?

A. Yes; and he told me he would tell what he could ſay in this Matter; and he ſhould be ready to appear at any Time, if that would be for the Dutcheſs's Advantage.

Q. Did he tell you he was going abroad, into *Holland*?

A. Not one Word.

Q. Did



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Q. Did you intimate to him, when the Dutcheſs was to make her Defence?

A. I think I did, but I can't be poſitive; but he took no Notice to me, that he would not be there.

Q. D'you know Mr. *La Fountaine*?

A. Yes, I know one *La Fountaine*.

Q. Is he in the Dutcheſs's Service?

A. I believe not.

Q. D'you know whether he is at *Drayton*?

A. I have ſeen him at *Drayton*.

Q. Did he live with Sir *John Germaine*, that you know of?

A. Never, that I know of.

Q. When ſaw you *Suſan Barrington*?

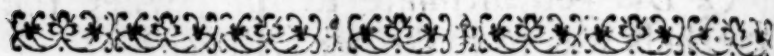
A. I can't be poſitive; but I think, not this Month or fix Weeks.

Q. Han't you ſeen her ſince this Bill was brought in?

A. Poſitively, I have not.

*Sign'd*

Robert Welborne.



*Die Lunæ 4 Martii, 1699.*

Eleanor Monfort sworn, deposeth as followeth.

*Quest.* **T**ELL the Lords if you know *Nicholas Hausfeur*, and on what Account you came to know him?

*Answ.* This *Nicholas* lodg'd two or three times at my House. My Husband was a *Dutch-man*, and he was a *Dutch-man*; they were like Brothers, they lov'd one another.

*Q.* What know you of this Man, this *Nicholas*?

*A.* My Husband told me, that this Man *Nicholas*, I did not know no other Name he had; my Husband told me, that he had a Design to rob his Master, and that he knew where his Gold and his Jewels lay, and had made false-Keys, and would watch his Opportunity, when his Master was at Play, or out of Town, and left the Keys at her House.

*Q.* Your Husband told you so?

*A.* Yes, my Husband bid me send for this Man; these were his last dying Words.

*Q.* Your Husband had a sad Misfortune. When was't your Husband told you so?

*A.* When he was in Prison.

*Q.* How

Q. How long ago is that?

A. About eight or nine Years ago, last *Christmas*. I would not have your Lordships think my Husband was so bad a Man; he was only condemn'd and executed for changing ten Pounds of his own Money.

Q. What were your Husband's last dying Words?

A. He desir'd me to send for this Fellow, and deliver those Things he left at my House. I sent for him. He came, and had some Keys in a Drawer, that my Husband told me he left there. He took two or three Keys, and put them in his Pocket, and look'd mightily out of Countenance.

Q. What did your Husband say to you?

A. He bid me give *Nicholas* the Keys, and bid him have a Care and keep good Company.

Q. When was that?

A. A Week or Fortnight before my Husband was executed.

Q. Did you acquaint *Nicholas* with what your Husband said of him?

A. No, an't please your Honours; I only told him, my Husband charg'd me to give him those Keys; but being in Trouble, and having a great many Enemies, I talk'd no further with him.

Q. What did *Nicholas* say to you?

A. He look'd out of Countenance, and told me he would come and see me another

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Time, but he never did; so that I did not see him again, till I saw him in the *Mense*, and then he told me that he would come to see me; but he never did, but always shun'd me.

Q. How long have you known *Nicholas*?

A. These eight or nine Years. I knew him when he was Foot-man to Sir *John Germaine*, and I knew him when he was his Gentleman. I knew him when he went, and I knew him when he came. He is like a Sea-Rat, he comes and goes when he pleases. I hope in God Almighty, it will be consider'd by this House, that such a Fellow's Witness should not be taken in such a great Concern.

*Signum*

Eleanor + Monfort.

Then the Dutcheſs's Council pray'd, that *Mac-Donnel* may be examin'd, as to the withdrawing Witnesses, and that it be taken in Writing; which was agreed to, and he examin'd.

Then the Dutcheſs's Council proceeded to examine other Witnesses, and their Evidence taken in Short-hand.

*Then*



*Then Mrs. Pitts being call'd for, and not appearing ; William Godfrey being sworn, said to this Effect.*

**I** Went to serve Mrs. Pitts, on *Friday* Morning ; when I came to her House, there was nobody. A Woman with a Pitcher of Water went in ; I ask'd her for Mrs. Pitts ? She said, she was not at Home : I shew'd her the Order, and left a Copy of it upon the Table. She was loth to receive it. She said, the Lady would be within quickly. The Woman's Name was *Olivet*. The last Night I went again, and a Woman came out, and said, Mrs. Pitts was not at Home. Then she spake in *French* to me. I did not understand her. I left a Note for her to attend this Day.

Then the Dutcheſs's Council pray'd, that some Agreements between the Duke and Dutcheſs, in 1694, may be read out of the Deeds executed for that Purpose ; which was agreed to, and read accordingly.



*Die Martis 5 Martii, 1699.*

Francis Negus *sworn, deposeth as followeth.*

*Quest.* I Desire Mr. *Negus* may be ask'd, whether the Dutcheſs of *Norfolk* did not ſend ſome Meſſage by him? The Words I don't confine him to; but, whether the Meſſage ſent by him to my Lord-Duke, was not to this Purpoſe, That notwithstanding the Articles, ſhe deſir'd to know from his Grace, in what Manner ſhe ſhould live, and that ſhe would be govern'd by his Directions?

*Anſw.* I think it was much about the Time of the Tranſaction of theſe Articles the Dutcheſs ſent to me. Mr. *Longueville* was Council for the Duke, and Sir *Thomas Powys* for the Dutcheſs. Mr. *Longueville* took what Care he could; and when they came to talk of their living ſeparately, I took it only to be an Apprehenſion and Fear, that my Lord-Duke would confine the Dutcheſs to ſome Houſe. My Lady-Dutcheſs ſent for me. I waited on her; and ſhe expreſs'd herſelf very ſenſibly of the Miſfortunes of the Duke and herſelf, that ſuch Differences ſhould have been between them; and ſhe was deſirous to let  
my

my Lord-Duke know, and desir'd me that I would let my Lord-Duke know it, that she would avoid all Company, that should give him any Offence; and that she would not so much as pay a Visit, but where he liked. I acquainted my Lord-Duke with something to this Purpose; for she often said to me, more than once or twice, that if she happen'd to die before my Lord-Duke, she would leave him her Estate; and I know I have said so to my Lord-Duke.

Q. Whether, from that Time, do you know, that the Duke sent any Message of Complaint to the Dutchess, to the Place where she liv'd, that he would have her live in any other Way?

A. I know nothing of that Matter.

Q. Do you know whether my Lord-Duke ever desir'd her to come and live with him?

A. I never heard of any such Thing.

Q. Did he ever send to her, to avoid any Company?

A. I never heard of any such Thing.

Q. Whether had you any Directions to attend the Duke, That he would give way in a Controversy between the Dutchess and a noble Lord of this House, whether he would wave his Privilege?

A. I have great Reason to desire Sir Thomas's Favour in this Matter; I know

not what he aims at. I was call'd to the Bar before, to speak the Truth ; as to the Matter of the Privilege, I know not what he means by it.

*Q.* I meant it only as an Instance of a civil Message between the Duke and Dutchess, owning her as his Wife ; and that this was a Message that bespoke a good Understanding between them ?

*A.* Will you have me to give an Answer to Sir *Thomas*, my Lords ? I confess the Duke did send for me, and ask'd how the Settlement and Agreement were betwixt the Duke and the Dutchess, because of this Matter of the Privilege.

*Q.* I did not mean that ; but only as a late Instance of the Duke's owning the Dutchess so far ?

*A.* When the Duke sent for me, he would know, whether by the Agreement, he was oblig'd to let her have the Privilege ? I said, I understood it so ; and tho' he had no Mind to do it ; but as he had wav'd his Privilege, in the Case of an Uncle, he would do it for her.

*Q.* What would have been the Consequence, if the Duke had not wav'd his Privilege ? Would not that have defended her from a Suit ?

*A.* That you may make use of as you please.



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Sir *Thomas Powis*. I would only make this Use of it, as an Instance of Kindness between the Duke and Dutcheſs.

*Francis Negus.*

After the Examination of *Francis Negus*, he being before ſworn, the Dutcheſs's Council declar'd, they had finiſh'd their Evidence.

Whereupon, the Duke's Council deſir'd to call a Witneſs or two, to ſupport *Nicolas Hauſeur's* Reputation. Then *William Allen* was ſworn and examin'd.



*Die Martis 5 Martii, 1699.*

*William Allen ſworn, depoſeth as followeth.*

*Queſt.* **D**'You know *Nicholas Hauſeur*?

*Anſw.* Yes.

Q. How long have you known him?

A. Three Years.

Q. Did you not know him before that Time?

A. I knew him about three Years ago.

Q. Had you any Dealings before that Time?

A. I had Dealings with him when he liv'd with Mr. *Germaine*.

Q. What

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*Q.* What were his Dealings ?

*A.* As honest and fair as any Man could desire.

*Q.* What Office had he under Mr. Germaine ?

*A.* He was Cook to Mr. Germaine, I suppose.

*Q.* What? Was he Cook to him ?

*A.* He bought in the Goods, and he paid me honestly for what he bought.

*Cross-Examin'd.*

*Q.* What Trade are you ?

*A.* A Butcher.

*Q.* Then he paid you his Master's Money for his Master's Goods ?

*A.* Yes, he paid me very honestly.

*Q.* When saw you him last ?

*A.* I saw him when I was summon'd here, by Order of this House ; but not before, of late.

*Sign'd*

William W. Allen.

The Duke's Council mov'd, for Copies of the Examinations and Journals ; which was granted, and then the Council withdrew. The following Orders were made.

It

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It is order'd by the Lords Spiritual and Temporal in Parliament assembled, That Copies of the Examinations, sign'd by the Witnesses this Day, and Entry in the Journal, be deliver'd to either Side: And that the Examinations taken this Day in Short-hand, be transcrib'd, in order to be read to the Witnesses to-Morrow.

It is order'd by the Lords Spiritual and Temporal in Parliament assembled, That to-Morrow, at Twelve of the Clock, this House will proceed to hear the Examinations taken this Day, read to the Witnesses, relating to the Duke and Dutchess of *Norfolk*, and all Lords summon'd to attend.

*Die Mercurii 6 Martii, 1699.*

After the Examination taken Yesterday, relating to the Duke and Dutchess of *Norfolk*, were read to the Witnesses, and they signing them, the Dutchess's Council mov'd to have Copies of the Depositions taken on either side, and then withdrew.

*Die*



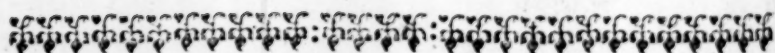
*Die Martis 5 Martii, 1699.*

Matthew Mac-Donnel *sworn, deposeth as followeth.*

**I** Was going to Mr. *Strange's* House, and I saw my Lord *Howard* of *Esrick* coming that Way, and he went to the Door and knock'd. I made up to the Door, and a Girl open'd the Door. My Lord ask'd if Mr. *Strange* was within? And she answer'd, Yes. Then I went to the Door, and ask'd if Mr. *Strange* was at Home? She answer'd, No, he went away on *Thursday*. I ask'd, by Packet-Boat, or how? She said, by long Sea. I thought she told my Lord, he was within; and so I came away.

*Signum,*

Matthew + Mac-donnel.



*Die Martis 5 Martii, 1699.*

Richard May *sworn, deposeth as followeth.*

*Quest.* **D**O you know *Nicholas Hausseur*?  
*A.* I never saw him 'till Sunday Fortnight last.

*Q.* Where



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Q. Where saw you him then ?

A. At my Lord Duke of *Norfolk's*. I had a Command from my Lord Duke to take him in there.

Q. Where?

A. To lodge him in my Lord-Duke's House. I am his Household-Steward ; he commanded me to provide for him in the House.

Q. I don't desire you should do any thing unbecoming to my Lord-Duke ; but you are upon your Oath, and you must tell the Truth ?

A. I'll freely tell what I know.

Q. Can you give me any Account where he was before that Time ?

A. I never saw nor heard of him 'till then.

Q. Hath he been there ever since ?

A. Yes, I made Provision for him, by his Grace's Command.

Q. Do you know *Vaneß*? Where hath she been ?

A. On *Sunday* was Fortnight she came thither likewise, and I was order'd to take care for her.

Q. Where was she lodg'd ?

A. In my Lord-Duke's House, in St. *James's-Square*.

Q. Has she been there a Fortnight ?

A. Yes, a Fortnight last *Sunday*, and coming here to attend the Lords.

Q. Had

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Q. Had she the Liberty of the House?  
Or was she kept close?

A. They were kept only as they desir'd themselves: No Body was deny'd Liberty to see them. They desir'd to be there, sooner than any Place.

Q. D'you know that those People have been sent for, and how long before they came?

A. I was never Privy to any Thing of that Nature: I had no knowledge of their Names, nor whence they came.

Q. Do you know of any Money issu'd out for their coming over?

A. Not one Penny.

Q. Do you know of any Reward they have had, or are to have?

A. I know not of any Reward they have had, or are to have.

*Sign'd,*

Richard May.



*Die Martis 5 Martii, 1699.*

Christopher Raine Sworn, *Deposeth as followeth.*

Q. **A**RE you Servant to the Duke of Norfolk?

A. Yes.

Q. D'you know *Hanseur*?

A. I

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*A.* I have seen him, but am not acquainted with him.

*Q.* How long is it since you saw him ?

*A.* It is within this Fortnight.

*Q.* Did you not see him any Time further off ?

*A.* No ; I am positive of it.

*Q.* Where did you see him first ?

*A.* In St. *James's*.

*Q.* In what Place there ?

*A.* At his Grace's House.

*Q.* Hath he been there ever since ?

*A.* Yes.

*Q.* Was there a Woman call'd *Vaneß* with him ? *A.* Yes.

*Q.* Did they come at the same Time ?

*A.* Yes.

*Q.* How long ago ?

*A.* A Fortnight ; it may be not so much.

*Q.* Had they the Liberty of the House, to take Notice where they were ?

*A.* They had Liberty to go were they pleas'd.

*Q.* Did they go abroad since they came there ?

*A.* I can't tell ; not to my Knowledge.

*Q.* D'ye know whether they went out of the House upon any Occasion ?

*A.* Not to my Knowledge.

*Q.* Who brought them there ?

*A.* I don't know.

*Q.* D'you know whence they came ?

*A.* No.

*Q.* Did

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Q. Did you not understand where they lodg'd before ?

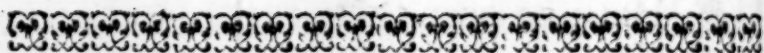
A. No. I am Stranger to them both; I never saw them before.

Q. Saw you them when they came first?

A. No; I was not at Home.

*Sign'd,*

Christopher Raine.



*Die Martis 5 Martii, 1699.*

Edward Cotter Sworn, *Deposeth as followeth.*

Q. **A**RE you Servant to the Duke of Norfolk ?

A. Yes.

Q. D'you know *Nicholas Hausfeur* ?

A. I did not know him but since this Tryal.

Q. How long ago is that?

A. About a Fortnight.

Q. D'you know where he had been before ?

A. No; I knew nothing of him, where he was, nor what he was.

Q. Came *Helena* the Dutch-woman with him?

A. Yes,



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A. Yes, the Woman came with him since the Tryal; I never saw them before.

Q. Did you never know them go out of Doors since they came, but to this House?

A. Never, no where else.

Q. Who brought them to the Duke's?

A. I know not.

Q. Whence came they: D'you know?

A. I can't tell.

Q. Did they never report in the House whence they came?

A. No, I never heard where they liv'd, nor how they behav'd themselves.

Q. D'you know whether ever any Reward was given them?

A. No.

Q. I desire he may be ask'd, Whether he has not known before, for some Time past, within this Fortnight or three Weeks, more or less, Meetings in *Somerſet-Houſe*, in order to this Tryal?

A. The Thing is this; I was one Night at *Somerſet-Houſe* with my Lord-Duke, 'twixt ſix and ſeven a Clock; but I can't tell how long it is, whether it be three Weeks or a Month; it is no more, that I know.

Q. What were you there about?

A. I went there with my Lord-Duke.

Q. Upon your Oath, Was there any thing done there, relating to this Tryal?

A. Upon my Oath I did not know, but  
twas

'twas concerning my Lord *Howard* of *Es-*  
*crick.*

Q. Was he there with the Duke?

A. Yes.

Q. Did you know who they went to?

A. No.

Q. Upon your Oath, Don't you know  
whether they went to *Madam Pitts*, or no.

A. They went to some House, but I  
don't know her Name they went to.

Q. Was there any Body else there, but  
my Lord Duke, and my Lord *Howard*?

A. God knows. My Lord-Duke call'd  
me to the Door, and sent me on a Message;  
and I went, and came again.

Q. Who did you see there, when you  
came again.

A. I saw none but my Lord-Duke, and  
another that I did not know.

Q. Who did you see go in?

A. None but my Lord-Duke, and my  
Lord *Howard*.

*Sign'd,*

Edward Cotter.



*Die Martis 5 Martii, 1699.*

Frances Huddleston Sworn, *Deposeth as followeth.*

Q. **U**PON your Oath, D'you know of any Meetings, relating to this Tryal, that have been within some Time past?

A. For Meetings, I know not any thing of them.

Q. Do you understand the Question?

A. I know nothing of any Meetings.

Q. Have you not been at any Place where any Thing has been done, relating to this Tryal, against the Dutchess of Norfolk?

A. I don't understand any thing of the Tryal. I know nothing of the Dutchess of Norfolk.

Q. Pray give a positive Answer: Have you not been present, or do you know of no Meeting, relating to the Proceedings against the Dutchess of Norfolk.

A. I never was at no Meeting.

Q. Who do you live with?

A. I live with my Lord Howard.

Q. Was you ever present at Somerset-House, where my Lord Howard and others met?

A. I

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A. I have been at *Somerset-House*, but know nothing of any Concerns.

Q. D'you know *Vaneß*?

A. I know no such Person.

Q. D'you know *Nicholas*?

A. I don't know him.

Q. Pray answer positively : Do you know one *Nicholas*, call'd *Hauseur*?

A. I know several of that Name, but I know not who you mean.

Q. I mean one that liv'd with Sir *John Germaine*?

A. . I know him not. I had never any Conversation with any Body that liv'd with Sir *John Germaine*.

[*Nicholas* call'd in.]

Q. Did you see any such Man as appears here, at *Somerset-House*?

A. know no such Man, as is call'd *Nicholas Hauseur*. I know several call'd *Nicholas*. but none of the *Hauseurs*.

Q. Look upon this Man : Have you seen him before, or not ?

A. Yes: I have seen him twice or thrice, but I knew not who you meant before.

Q. How long is it since you saw him first?

A. About a Fortnight ago.

Q. Have you not not seen him at *Somerset-House*?

A. Never.

Q. Where did you see him?

A. In



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*A.* In *Gerrard-Street*.

*Q.* Was that all the Places you saw him at?

*A.* I saw him no where else.

*Q.* Whose House did you see him at?

*A.* At Captain *Soames's* Lodgings.

*Q.* Did you not see a *Dutch-woman* there, one *Helen Vaneß*?

*A.* There was a Woman with him; I don't know her Name.

*Q.* Did you see her at Captain *Soames's*?

*A.* She was with this Gentleman there.

*Q.* Did you see her at no other Time or Place:

*A.* No.

*Q.* Who else was there then?

*A.* Captain *Soames*, my Lord *Howard*, and one or two more. I was but at the Door: I have seen this Man go in: I was but a Foot-Man, waiting at the Door: I knew not the others that were there.

*Q.* Did you know no more that were there?

*A.* My Lord *Howard* was in the House, but I know not if he was with them.

*Q.* Did you ever see *Helen Vaneß* before that Time.

*A.* I have seen the Woman since, but never saw her before.

*Q.* Did you never see her any where else?

I

*A.* Never

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*A.* Never any where else but at this House, going and coming.

*Sign'd,*

Francis D. Huddleston.

The Council being withdrawn, the following Orders were made.

It is Order'd by the Lords Spiritual and Temporal in Parliament assembled, That Copies of **the** Examinations, read to, and sign'd by, the Witnesses to Day, be deliver'd to either Side.

It is Order'd by the Lords Spiritual and Temporal in Parliament assembled, That this House will peremptorily proceed to hear the Duke of *Norfolk's*, and Dutcheſs of *Norfolk's* Council; to ſumm up the Evidence on both Sides, on *Friday* next, at Twelve of the Clock, and all the Lords ſummon'd to attend.

The Evidence having been ſumm'd up, the Lords, after long Debate, and a Division of the House, Committed the Bill, by a Majority of Sixteen.

Whereupon the Dutcheſs immediately preferr'd the Petition recited in the Order, 8 *Martii*.

*Die Veneris 8 Martii, 1599.*

**U**PON reading the Petition of *Mary* Dutcheſs of *Norfolk*, Shewing, That by the Bill now depending, for diſſolving the Marriage between the Duke of *Norfolk* and your Petitioner, her Joynture and Marriage-Agreements are to be ſet aſide, and other Things in the Petition mention'd ; and praying to be heard by her Council, touching the ſeveral Claims and Intereſt, and ſeveral Clauſes in the Bill ; It is order'd by the Lords Spiritual and Temporal in Parliament aſſembled, That the Petitioner ſhall be heard by her Council to morrow, at eleven of the Clock, at the Committee of the whole Houſe, to whom the ſaid Bill ſtands committed ; at which Time, ſhe is to produce her ſaid Marriage-Agreement and Writings, as in the Petition is ſet forth : At which Time alſo, the Duke's Council may be preſent, if he think fit.

*Matth. Johnson Cler. Parliamentar.*

The Dutcheſſes Council having refus'd to joyn in drawing any Clauſe, tho' they advis'd a Petition about the Joynture and Marriage-Agreement, the Duke's Council prepar'd a Clauſe, to which the Lords added a few Words, and paſſ'd it as in the

I 2 Bill.

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Bill. The Bill being sent down to the Commons, the Dutcheſs preſented the following Petition.



*To the Honourable the Knights, Citizens, and Burgeſſes, in Parliament aſſembled,*

The Humble PETITION of  
MARY, *Dutcheſs of NORFOLK,*

*Sheweth,*

**T**HAT for putting an End to all Differences between the Duke of Norfolk, your Petitioner's Husband, and your Petitioner, ſeveral Articles of Agreement were enter'd into, and executed in *April, 1694,* by the ſaid Duke, your Petitioner, and your Petitioner's late Father, the Earl of *Peterborough*; whereby, and by Deeds executed purſuant thereunto, the Duke had his then deſir'd Advantage, and hath fully enjoy'd the Benefit thereof; That your Petitioner, about the Time of perfecting the ſaid Deeds, ſignify'd to the ſaid Duke by Mr. *Negus*, that ſhe ſhould always readily comply



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comply with all such Orders, in her Way of Living and Conversation, as he would think fit to appoint Notwithstanding which, and without ever signifying any Dissatisfaction to or with your Petitioner, and without any manner of Notice, or previous Proceeding in the common and ordinary Course of Justice, and to take from your Petitioner that legal Tryal in the Ecclesiastical Court, which by the Laws of this Realm (as she is advis'd) she is entitl'd unto, did, on the 16th of *February* last, exhibit a Bill in the House of Peers, entituled, *An Act to dissolve the Duke of Norfolk's Marriage with the Lady Mary Mordant, and to enable him to marry again*, Upon which the Proceedings were so very quick, two Witnesses, lately brought from beyond the Seas, being forthwith examin'd against your Petitioner, and your Petitioner being charg'd with Facts suppos'd to be committed many Years since, and long before the Date of the said Articles, could not be prepar'd to make her Defence, as she would have done, if the Proceedings had been against her according to the known Laws of this Land. The Places of Abode of the Witnesses produc'd against her being not yet known or discover'd to your Petitioner; and your Petitioner having Notice, that the said Bill is pass'd the House of Lords,

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and sent down for the Concurrence of this Honourable House:

*Your Petitioner prays she may be heard by her Council at Law, and one Civilian, against the said Bill, before any Proceedings be had thereon by this Honourable House.*

And your Petitioner shall pray, &c.

M. NORFOLK.

A Day being appointed, by the House of Commons, for the Committee to proceed, the Duke caus'd the Papers following to be publish'd.



T H E

Duke of *Norfolk's* CASE,

W I T H

*Reasons for passing his* BILL.

**I**F Want eiter of Precedent for a Parliamentary *Divorce*, before going through the tedious and ineffectual Methods of *Doctors*

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*etors Commons*, or of Demonstration of Fact, have hitherto depriv'd the *Duke of Norfolk* of that Relief against his Wife's Adultery, which the *Divine Law* allows; The late Statute made in the like Case, and the Coming in of Two, who, while the *Duke's* former Bill was depending, had been sent away to prevent that Discovery which they now make, cannot but be thought to remove all Objections against an Act of Parliament, not only for the Benefit of the *Duke*, but of the *Publick*, as a Means to preserve the Inheritance of so great an Office, and *Honours*, to Persons of the true Religion.

And since *Bishop Gozens's* Argument, in the *Lord Rosse's* Case, has made it evident, that those Canons which govern the Spiritual Court in this Matter, are but the Remains of *Popery*, nothing can be now requisite to satisfy the most scrupulous of the *Reformed Religion*, but to set the *Duke's* Proof of his Lady's Adultery in a true Light.

The Reputation which the *Dutchess* had maintain'd of Wit and Discretion, made it difficult for many to believe, that she could be surpriz'd in the very Act of Adultery, as had been formerly prov'd. And though then it appear'd, That one *Henry Keemer* liv'd with the *Dutchess*, while she went by a feign'd Name, at an House hir'd for her

at *Vaux-Hall* by Sir *John Germaine's* Brother; and that *Nicola*, who then liv'd with Sir *John*, us'd to receive Wood sent from the Dutchess to Sir *John's* House by the Cock-pit; the withdrawing of *Nicola*, and carrying with him the *Dutch Maid*, equally entrusted with the Secret on Sir *John's* side, left no Evidence of their constant Conversation, but *Keemer* since dead, and *Susannah Barrington*, who had the like Trust from the Dutchess.

*Keemer*, though very unwillingly, some Years since confess'd his living with the Dutchess at *Vaux-Hall*, where he pretended she was obliged to conceal herself for Debt: And what Share *Susannah* had in the Secret was unknown, 'till *Nicola* appear'd. *Nicola* coming into *England* some time since, in Expectation of a Service, express'd his Readiness to discover what he knew, and to endeavour to bring with him the *Dutch Maid*.

\* She proves, that for two Months the first Summer after the King came for *England*, Sir *John Germaine*, and the Dutchess lived together as Man and Wife, and were seen in Bed together by her, Mr. *Byam*, and his Wife, Sir *John's* Sister: And that *Nicholas Hausseur*, Sir *John's* Valet de Chambre used to be assisting to him; as the Dutchess's

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\* *Eleanor Vaness*, Exam. 22. Feb. 1699.



chefs's Woman, *Susannah Barrington*, was together, at going to Bed, and rising.

She proves the like Conversation at *Vaux-Hall*, and the Dutcheſs's Houſe at the *Mill-bank*, 'till the Duke's firſt Bill for a Divorce was depending; within which Time *Nicholas Hauſeur*, by Sir *John*'s Order, carry'd away her, and *Susannah Barrington*, with Intention of going for *Holland*, to prevent their being examin'd to what they knew; but the Wind proving contrary, they could not go 'till the Bill was rejected; and then Sir *John* fetch'd back *Susannah*, who was moſt uſeful to the Dutcheſs; but *Hauſeur* went for *Holland* with *Ellen*.

\* He confirms *Ellen*'s Evidence in every Particular; and beſides the Perſons mention'd by *Ellen*, as privy to Sir *John*'s lying with the Dutcheſs, names Sir *John*'s Brother *Daniel Nicholas* having been found very truſty, his Maſter ſent for him to return to his Service; and gave him the Opportunity of proving the Continuance of the ſame adulterous Converſation at ſeveral Times and Places; from the Summer 1692, to the 26th of *April* 1696. He ſwears he had, after his Return to Sir *John*'s Service, ſeen them in Bed together at Sir *John*'s Houſe, at the *Cock-pit*, and at the Dutcheſs's Houſes at *Mill-bank*, and where ſhe now lives;

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\* *Nicholas Hauſeur.*

lives ; and us'd to be let into the Dutcheſs's Apartment by *Sufanna Barrington*, or *Keemer*. Nor can any Man, who ſhall read the ample Testimonials given Mr. *Hauſeur* by Sir *John*, (by the laſt of which it appears, that he ſerv'd him faithfully as his Steward) reaſonably queſtion *Hauſeur's* Credit.

\* Another, who had been advanc'd by Sir *John* from his Footman to Mr. *Hauſeur's* Place, and from thence to a good Office in the Excife, very unwillingly confirm'd the Testimony of *Hauſeur* and the *Dutch Maid*; not only as to the Time of their going from the Service of Sir *John* and the Dutcheſs, but tho' being no Foreigner, he could not ſo eaſily be ſent away to prevent Diſcovery ; and therefore was not let ſo far into the Secret as *Hauſeur* and the *Dutch Maid*; yet, he ſwears the Dutcheſs us'd to come mask'd to his Maſter's Houſe; that he has gone with him as far as the Horſe-Ferry towards her Houſe at the *Mill-bank*; that then his Maſter ſometimes lay out all Night, and the next Morning he has carry'd *Linnen and Cloaths* for his Maſter to *Keemer's* Houſe, or *Keemer* has fetch'd them from him; and this he proves to have been ſince the rejecting the former Bill, and about five Years ſince, when he

was

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was succeeded by *Hausieur*, as before he had succeeded *Hausieur*.

Two other Foreigners, *La Fountaine*, who had liv'd with Sir *John*, and was serv'd with Summons at the Dutcheſs's Houſe at *Drayton*, and *Hugonee*, who ran away from the Lord *Haverſham's*, ſince Summons was taken out againſt him, ſeem to have the ſame Truſt that *Hausieur* had; for both declar'd, that nothing ſhould oblige them to *betray their Maſter's Secrets*: One ſaid, *No Court could diſpence with his Oath of Secrecy*; and both declar'd they would immediately go beyond-Sea. Summons have been taken out for Mr. *Brian*, and his Wife, and Sir *John Germaine's* Brother (who are, or lately were in Town) to confeſs or deny what *Nichola* and *Ellen* appeal to them for; and it cannot be imagin'd, that Sir *John* ſhould chuſe the Honour of being thought to have to do with a Dutcheſs, before the clearing her and himſelf from the Imputation, by bringing his Relations to diſprove the Charge, if what is ſworn to be within their Knowledge is falſe.

And if Sir *John's* Vanity ſhould prevail with him, at leaſt it is to be preſum'd, that his Relations would be more juſt to him and the Lady, than to ſuffer any thing to paſs againſt them, which they could in Truth and Juſtice prevent.

But since none of them appear, the World will believe their absenting more than a Thousand Witnesses, in Confirmation of what Mr. *Hausieur*, *Ellen*, and *Bayly* have sworn. Whose Evidence not only stands untouch'd by any thing offer'd by the Dutcheſs's Witnesses, but is plainly confirm'd by them in the principal Parts.

This being the Nature of the Proofs, 'tis observable,

1. That there never yet was any Case of this Kind, where the Evidence was not liable to greater Objections than can be made to this.

Tho' in the latest Case of this Kind, there was full Conviction of the Lady's having Children while she liv'd separate from her Husband, and the Presumption was very violent whose the Children were; yet this was but Presumption, and that was weaken'd by the Presumption in Law, that they were the Husband's; especially, since there was no direct Proof of the Lover's ever lying with her.

2. Tho' in that Case, by Reason of the Interval of Parliament, and Fear of the Deaths of Witnesses, a Suit was begun in *Doctors Commons*, 'tis taken from thence while the Suit was depending; therefore, that was rather an Objection against proceeding in Parliament, than an Argument for it.



3. In that Case, several Witnesses were examin'd at the Bars of both Houses, who had not been examin'd at *Doctors Commons*, nor any Notice given of their Names before their Examination.

4. It appears by that Case and the present, that the Examinations in Parliament are more solemn and certain than those of the Spiritual Court, which depend too much upon the Honesty of the *Register*, or his Deputy.

5. Before that Case, Parliaments have either broken thro' the Rules which bind the Spiritual Court, as in the Case of the Duke of *Norfolk*, \* 1 *Eliz.* where the Parliament ratify'd the Marriage, *as lawful according to Gods Law; tho' protracted and letted, by reason of certain Decrees and Canons of the Popes Law*: Or else have dissolv'd a Marriage where there had been no Application to *Doctors Commons*; as in the Case of Mrs. *Wharton*, † who had been marry'd to Mr. *Cambel*; and yet there had been no Examination of Witnesses, but what had been before the two Houses.

So long before, in the Case of Sir *Ralph Sadler*, \*\* upon Proof before the two Houses that the Lady *Sadler's* former Husband had deserted her, and disappear'd for four Years before she marry'd Sir *Ralph*, the  
Parliament

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\* 1 *Eliz. n. 31.* † 2 & 3. *W. M.* \*\* 37. *H. 8.*

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Parliament legitimated her Children by Sir Ralph.

Whereas some object against the passing the Bill, as if it would countenance a Jurisdiction in the House of Lords, to examine to such Matters, in the first Instance or originally; the Objection would be the same, if it had begun, as it might, in the House of Commons; but in Truth would be of equal Force against most private, and several publick Acts, occasion'd by the Examination of Witnesses, or Notoriety of Fact.

Since therefore, the Duke has so long, and so often in vain endeavour'd to be freed from a Lady, publickly fam'd, and prov'd to have liv'd with Sir *John Germaine*, as his Wife; the Duke's former Disappointments cannot but be powerful Arguments for his speedy obtaining that Justice which the Spiritual Court cannot give him, their Power reaching no further than to that Liberty of living as *she list*, some Years since settled by Articles: But as none of less Art and Oratory than her Council could have turn'd this into a Licence to commit Adultery, *if she list*, or a Pardon afterwards; had there not been Evidence of her Acting according to such Construction, the Duke would have hoped she had repented of the former Injuries he had receiv'd from her; but now hopes she shall  
not

not longer continue to bear the Name of his Wife, and put him in Danger of being succeeded by Sir *John Germaine's* Issue, or deprive him of the Expectation of leaving his Honours, Offices, and Estate, to a Protestant Heir.



Bishop COZEN'S  
ARGUMENT,

PROVING,

That *Adultery works a Dissolution of Marriage.*

Being the Substance of several of Bishop *Couzens's* Speeches in the House of Lords, upon the Debate of the Lord *Ross's* Case.

*Taken from Original Papers, writ in the Bishop's own Hand.*

THE Question is indefinitely to be spoken of, *Whether a Man being divorc'd from his Wife, who hath committed Adultery, and is convicted of it, may marry himself*

*himself to another Wife or no, during the Life of her which is divorc'd.*

The Place in *St. Matthew* the 5th, repeated again *St. Matthew* the 19th, has great Perpicuity : If it be not lawful for any Man to put away his Wife, and marry again, except it be in the Case of Fornication, (for the displacing the Words, by putting the Exception before the Marriage, cannot alter the Sense,) then, *a contrario*, it must of Necessity follow, That if the Wife be put away for Fornication, the Husband, by the Tenor of *Christ's* Words, is left free to marry again ; which Freedom is not allow'd to the Adultress herself, nor any Man else that shall marry her.

*St. Mark* and *St. Luke* have been oppos'd to *St. Matthew* ; and it has been said, that *Christ's* Words in *St. Matthew*, did not properly belong to *Christ's* Disciples, or the Christian Church, as the Words in *St. Mark* and *St. Luke*, which are absolute, do ; which is a Saying that neither I, nor, I think, no body else ever heard of before ; for *Christ's* Sermon in the Mount was spoken to *his Disciples*, and especially belonged to *Christians*.

'Tis clear they are spoken to *his Disciples* ; for he says to them, that they are *the Salt of the Earth, and the Light of the World* ; and that they are *blessed, when they suffer*.



*suffer Persecution for his Name's sake; which no Man will say or apply to the Jews.*

'Tis true, that in the 9th Chapter of *St. Matthew*, *Christ* answers the *Scribes* and *Pharisees*, who came to tempt him with their Question, *Whether it was lawful for a man to put away his wife for any cause, as they said Moses had permitted them to do.* But the Answer that *Christ* gave them, That it was not lawful, *but only in case of adultery, for men to put away their wives, and marry another, was a Rule which concern'd all Christians to observe for ever after; and for that Reason was recorded by St. Matthew.*

The Words in *St. Mark* and *St. Luke*, are not to be taken absolutely, but to be supply'd and understood by his Words in *St. Matthew*, as in many other Cases is clear, *viz.* The Thief upon the Cross; Baptism in the Name of the Father, Son, and Holy Ghost, &c. whereof many Instances may be brought, as the Destruction of *Niniveh*, &c.

But for *Christ's* Words, the Exception confirms the Rule, and infers a Concession, that in the Case of *Fornication*, the putting away one Wife, and marrying another is allow'd. It is alike with divers other his Exceptions, which are found in Scripture: For Brevity, I will instance in this one, *viz. Except ye repent, ye shall all likewise perish.*

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*rish.* Upon which Text, if I, or any Bishop else were to preach; I believe we should not discharge our Duty, unless we should tell the People, That if by the Grace of God they did repent, they should not perish.

The Exception here, *ei uñ, nisi*, unless, is parallel with the 1 Kings 3. 18. *None were in the house, except we twain*; they two therefore were, others were not.

Such Exceptions proceeding from natural Equity, are tacitly imply'd in Laws, tho' pronounc'd in general Terms.

But as to the Exception here, the Words are not capable of any other Sense than as I have observ'd; for except that Restraint be referr'd to Marrying again, the Sense would run thus, *Whosoever puts away his Wife commits Adultery*; which stands not with Truth or Reason; since it is not the Dismission that is adulterous, but the Marriage of another. It is, therefore, the plain Drift of our Saviour, to teach the *Pharisee*, that the Marriage of a second Wife, after a Dismission of a former, *upon any other cause, except for fornication*, is no less than Adultery; thereby inferring, That upon a just Dismission for Fornication, a second Marriage cannot be branded with Adultery.

Besides, the *Pharisee's* Question [*Is it lawful for a man to put away his wife for every Cause*]

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*Cause*] was not without a plain Implication of Liberty to marry another, which our Saviour well knowing, gives a full Answer, as well to what he meant, as what he said; which had not been perfectly satisfactory, if he had only determin'd that one Part concerning Dismission, and not the other concerning Marriage; which Clause, if two *Evangelists* express not, yet it must be fetch'd necessarily from the third; since it is a sure and irrefragable Rule, *That all four Evangelists make up one perfect Gospel.*

The *Rhemists*, and College of *Doway*, urge for the *Popish* Doctrine, *Rom. 7. 2. The woman which hath an husband, is bound by the law to her husband as long as he liveth; but,*

1. This Place is to be expounded by *Christ's* Words.

2. *St. Paul* hath no Occasion here to speak of *Divorce*, but of *Marriage whole and sound*, as it stands by *God's* Ordinance.

3. He speaks of a Woman who is under an Husband; so is not she that is divorc'd from him.

4. *St. Paul* useth this to his Purpose of the Law being dead, to which we are not bound.

Nor is their Doctrine more favour'd by *1 Cor. 7. 10. Let not the Woman depart; as being in her Choice whether she should depart or not: But in the Case of Fornication*

*tion*

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tion she was to depart, or rather be *put away*, whether she would or not.

The Bond of Marriage is to be enquir'd into, what it properly is.; being a Conjugal Promise solemnly made between a Man and his Wife, That each of them will live together according to God's Holy Ordinance, notwithstanding Poverty or Infirmary, or such other Things as may happen during their Lives. Separation from Bed and Board, which is Part of their Promise so to live together, doth plainly break that Part of the Bond whereby they are ty'd to live together, both as to Bed and Board. The Distinction betwixt Bed and Board, and the Bond, is new, never mention'd in the Scripture, and unknown in the ancient Church; devis'd only by the *Canonists* and the *Schoolmen* in the *Latin Church* (for the *Greek Church* knows it not) to serve the Pope's Turn the better, 'till he got it establish'd in the *Council of Trent*; at which Time, and never before, he laid his *Anathema* upon all them that were of another Mind; forbidding all Men to marry, and *not to make any Use of Christ's Concession*.

Bed and Board, or Cohabitation, belong to the Essence and Substance of Matrimony; which made *Erasmus* and Bishop *Hall* say, *That the Distinction of those two from the Bond, is meerly chimerical and Fancy.*

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The Promise of Constancy and mutual Forbearance, if it hinders Divorce as to the Bond, hinders it also as to Bed and Board; and because the same Bed, and the same Table, were promis'd in the Marriage Contract; but the Promise does not extend even to tolerating *Adultery*, or *malicious Desertion*; which, according to God's Ordinance, *dissolves the Marriage*.

Our Saviour speaks of Divorces instituted by the *Mosaical Law*; but they were no other than Divorces from the Bond.

The Form of the *Bill of Divorce* among the Jews was this, *Be expell'd from me, and free for any Body else*. To give the Bill of Divorce, is from the Hebrew Root כרת, which is to break, or cut off the Marriage. With this agree the ancient *Canons*, *Councils*, and *Fathers* of the Church.

*Concil. Neocaesar. & Elib.* forbid the retaining an adulterous Wife. *Concil. Eliber. Amelian. & Arelatens.* give Liberty in such Case to marry again. *Clemens's* Constitution, *Tertullian*, *St. Basil* in his *Canons* approv'd by a general Council, are for marrying again. *Concil. Venet.* If they marry in any other Case than Fornication, they are to be *excommunicated*, and not otherwise. *Concil. Wormat.* gives Liberty to the Innocent Party to marry after Divorce. *Concil. Lateran.* gives leave for the innocent Party after a Year to marry again.

*Concil.*

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*Concil. Lateran.* If any one take another Wife while a Suit is depending, and afterwards there be a Divorce between him and the first, he may remain with the Second.

*Lactantius, St. Hierom, and Epiphanius,* are for Allowance of Marriage after Divorce. *Chrysostom, Hom. 19. 1 Cor. 7.* says, That the marriage is dissolv'd by adultery; and that the husband, after he hath put her away, is no longer her husband.

*Theophylact.* on the 16th of *St. Luke* says, That *St. Luke* must be interpreted by *St. Matthew*. *St. Hillary* is for marrying again, as *Dr. Fulk* saith upon *St. Matthew* the 7th. The *Eastern Bishops*, in the *Council of Florence*, are for marrying again. *Justin Martyr* speaks of a Christian Woman's giving a Bill of Divorce to a dissolute Husband, without finding any Fault with it.

*St. Ambrose* says, a Man may marry again, if he put away an adulterous Wife; *Theodoret* said of a Wife who violated the Laws of Marriage; Therefore our Lord requires the Bond or Tye of Marriage to be dissolved.

All the *Greek Church* to this Day allow it. *Erasmus Cajetan*, and other Papists: The Civil Law, and the Laws of the Emperor are clear for it; and the Constitutions of our Church of *England*, in the Time of *H. 8. E. 6. and Queen Eliz.*

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The Practice of the *English Church*, in the Stat. 1 Jac. c. 11. against Second Marriages, Divorces are excepted; and in Canon 107, 'tis provided they shall not marry again; but it is not said such Marriages are void, only the Caution is forfeited: *Neither doth the Canon speak of such Separations, wherein the Bond it self is broken, as 'tis by Fornication.*

Even the *Canon-Law* allows marrying again, in case a Woman seek her Husband's Life, and in case of a Bond-woman. *Gratian* says, in the Cause of Adultery, lawful Marriages ought not to be deny'd. In the Case of an incurable Leprosy, it was the Advice of St. Gregory, to *Austin* the Monk, That he that could not contain, should rather marry. *Bel-lamin* owns, That the Bond of the Marriage of Infidels is dissolvable; but the Marriage of the Faithful, and of Infidels, is of the same Nature; and *Justinian*, a Jesuit, confesses, That it is simply Lawful for the innocent Party to marry again. And the *Roman* Doctors allow a Dissolution of the Bond of Marriage, if the Parties should, after Consummation, transfer themselves into a Fryary or Nunnery.

† The *Canons*, which in the Case of Adultery, prohibit marrying in the Lifetime

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† Ref. Leg. Eccles. Tit. de Adulteriis & Divorciis.

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time of the guilty Person, are contrary to two Acts of Parliament, made 25 H. 8. and 3 & 4 E. 6, *Wherein no Canons are allow'd, that be any way repugnant to the Laws of God, or the Scripture, the King's Prerogative Royal, and the Statutes of this Land.* Thirty two Persons were to review the *Canon-Law*, in which Review, drawn up by Archbishop *Crammer*, the innocent Person is permitted to marry again, *according to Christ's Law and Concession.*

We have Examples of such Marriages, in H. 4. of *France*, H. 8. of *England*, Lord *Mountjoy*, Lord *Rich*, Bishop *Thornborough*, and divers others. And it is observable, that in the Case of the Marquis of *Northampton*, 5 E. 6. who had been divorc'd for his Lady's Adultery, and marry'd another, before any Act of Parliament made concerning it, an Act, which pass'd afterwards, (only two Spiritual and two Temporal Lords dissenting) declares, he had been *at Liberty by the Laws of God to marry*, and did lawfully marry another; where the Act manifestly supposes, that whatever had obtain'd for Law 'till that Time, was void, as being *contrary to God's Law.*

The most considerable Men of the Reform'd Churches, both at Home and Abroad, are of this Opinion: *Grotius* quotes *Tertullian*,



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*Tertullian*, in whose Time, it was lawful for the innocent Party to marry.

*Lancelot Inst. Jur. Can.* acknowledges that Divorce is a Dissolution of the Marriage.

*Selden*, who is not likely to contradict the Laws of this Kingdom, maintaineth, That Marriage after Divorce, is to be allow'd; and in that Particular, *Dr. Hammond* doth not contradict him, but is clearly for it.

The Opinion of *Amesius* deserves to be set down at large. " Marriage, says he, cannot be dissolv'd by Men at their Pleasure; and for that Reason, as it is consider'd simply and absolutely, it is rightly said to be indissoluble; because Marriage is not only a Civil, but a Divine Conjunction; and is also of that Nature, that it cannot be dissolv'd without Detriment to either Party: Yet it is not so indissoluble, but it may be dissolv'd for a Cause which God approves as Just; For the Indissolvability was not instituted for a Punishment, but for the Comfort of innocent Persons; and it admits an Exception, wherein God ceases to conjoyn. By Adultery, two are made not to remain one Flesh; hence it is, that a contagious Disease is not a Cause of dissolving Marriage. By Adultery, the very Essence

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" of

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“ of the Contract is directly violated; but the  
 “ Contract ceasing, the Bond depending on  
 “ the Contract, necessarily ceases. It is a-  
 “ gainst all Reason, that all Matrimonial  
 “ Duties should be for ever taken away,  
 “ yet the Bond or Obligation to those  
 “ Duties, should continue. The Words of  
 “ our Lord, *Matth. 5. 32. and 19. 9.* have  
 “ no Distinction or Limitation of the put-  
 “ ting away, but simply and absolutely  
 “ approve of putting away; therefore they  
 “ approve of putting away, not partial,  
 “ or to a particular Purpose, from Bed  
 “ and Board, but total.

None are against the Reform'd Divines, but Dr. *Howson*, Mr. *Bunmy*, and Dr. *Pi-deaux*.

Dr. *Howson* was a profess'd Adversary to Dr. *Reynolds*, who was a great Maintainer of the Church of *England*, against all the Points of Popery, and particularly in this.

Dr. *Taylor*, Bishop *Hall*, Dr. *Fulk*, are for second Marriages; no Authors against them, but the *Council of Trent*, and those of the *Church of Rome*; whose Credit is only sav'd, by those of our Church who agree with them.

Upon the Difference of Explication between St. *Ambrose*, *Origen*, and St. *Austin*, a new Kind of Divorce has been thought of, from *Bed and Board*; but this Divorce

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or *Name of a Divorce*, was unknown to the *Jews*, and *Ancient Christians*.

I said so much before, at the first and second Reading of this Bill, that I was in good Hopes to have had no further Occasion given me, of answering any Objections against it now; but seeing divers new Arguments have been study'd and fram'd against it, since that Time, I shall now endeavour to satisfy and clear them all.

1. The First Argument against it is, That the Separation from Bed and Board, doth not dissolve the Bond of Marriage. To which I must reply, as I did before, That this is a Distinction without a Difference; newly invented by the *Canonists* and *School-men*, and never heard of either in the *Old* or *New Testament*, nor in the Times of the Antient Fathers, who accounted the Separation from Bed and Board, to be the Dissolution of the Bond it self.

2. That first Institution of Marriage, that they may be *one Flesh*, is by Adultery dissolv'd, when the Adultress makes her self *one Flesh* with another Man; and thereby dissolves the first Bond of her Marriage.

3. The Objection; That if the Bond be dissolv'd, and afterwards, if the Man or

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Woman be reconcil'd, they must be marry'd over again, is no necessary Consequence, no more than 'tis in a Person baptiz'd, who may break his Covenant, and renounce his Baptism; and yet, upon true Repentance, be receiv'd into God's Favour, by Virtue of the first Covenant, without a new Baptism. Suppose a Witch, who, they say, makes a Compact with the Devil, to renounce her Baptism, should, afterwards, by the Grace of God, seriously and truly repent herself of the Wickedness, I do not believe, that any Body would take upon him to baptize her again. And if a Priest should renounce his Orders, and turn *Turk*, and yet afterwards repent him, and return into the Church, he need not be re-ordin'd a second Time. The Case will be the same in Marriage.

4. I said heretofore, That the *Roman* Doctors allow'd this Dissolution of the Bond, when the Man and Wife, even after the Consummation of Marriage, would transfer themselves into a Friary, or Nunnery: But because it hath been since doubted, that no Authority can be shew'd for this Particular, I shall here shew it out of the old Constitutions of the Church of *England*.



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\* “ And in the Case of Religion, that  
“ is the true Understanding that, to wit,  
“ either of them betaking themselves to  
“ Religion before Carnal Knowledge, the  
“ Bond of the Marriage be dissolv’d; *but*  
“ *if both enter into Religion, and make solemn*  
“ *Profession, then such Marriage is dissolv’d,*  
“ *even as to the Bond.*

5. It hath also been said, that if the  
Bill pass, it will pass against the Church  
of England; which, I confess, I do not un-  
derstand; for the Church of England is  
*within the Kingdom of England*; and if  
the Laws of this Kingdom be for the Bill,  
and have declar’d it by the Assent of the  
King, Lords, and Commons, as in the  
Case of the Marquis of Northampton was  
heretofore declar’d, in the Time of King  
Edward the 6th, *That by the Laws of God,*  
*the Innocent Party was at Liberty to marry*  
*again*; certainly the *Spiritual Lords*, as  
well as the *Temporal*, and *Commons*, are  
bound to admit it; and I know not why  
they should be call’d the Church of England,  
that joyn with the Council of Trent, and  
plead so much to uphold it, rather than others,  
that joyn with all the Reform’d Churches,  
and plead against the Canon of the Church  
K 3 of

---

\* Prov. Will. Lindewode, *five Const. Ang. fol. 94.*  
*Fernul. latenus separentur.*

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*of Rome, which hath laid an Anathema upon us, if we do not agree with them.*

As to the suppos'd Inconveniencies that will follow upon marrying again.

1. More Inconveniencies will follow, if they be forbidden to marry again.

2. The Father would be in an Uncertainty of the Children, if he should retain the Adulterers.

3. There would be Danger of Poisoning, or Killing one another, if no second Marriage were allow'd.

4. Where the Parties should consent to new Marriages for their own Lusts, the Magistrates have Power to over-rule such Practices.

5. If they be kept altogether by Divorce from marrying, it would occasion the Innocent Party to sin.

A little before the main Question, about passing the Duke's Bill, the Dutchess's Agents handed about this Paper, among such as they thought to be her Friends.



THE

CASE of *Mary*, Dutcheſs  
of *Norfolk*.

UPON the Marriage of the Dutcheſs with the now Duke of *Norfolk*, in the Year 1677, her Father, the late Earl of *Peterborough*, paid, as Part of her Portion, 10000 *l.* and ſettl'd on that Marriage, Lands of near 1000 *l. per Annum*, the Remainder of which, on Failure of Iſſue, was limited to the now Duke, and his Heirs for ever; and the Earl, after his and his Lady's Death, ſecur'd to the Duke, the Forfeiture of *Drayton*, worth 10000 *l.* more; and the Duke receiv'd alſo by Agreement, 1000 *l. per Annum*, for twenty Years, out of the Earl's Eſtate; beſides very rich Jewels, Plate, and other Things of great Value, which the Dutcheſs brought with her into the Duke's Family: And great Debts having been contracted, for the Support of the Duke's Honour and his Service, while he cohabited with the Dutcheſs, ſhe hath, ſince his Separation

from her, paid them out of her own Estate.

That by the evil and malicious Insinuations of the Dutcheſs's Enemies, the Duke was prevail'd on to carry her, then a Protestant, into *France*, and to put her into a Monastery (where ſhe could not be admitted without changing her Religion) and left her there, on great Affurances of ſending for her Home in a ſhort Time, and ſo parted with great Expreſſions of Kindneſs.

That a conſiderable Time after, by the Dukes Conſent, ſhe return'd into *England*, and liv'd retiredly at *Drayton* in *Northamptonſhire*; and at the Time of the Revolution, ſhe again retir'd to *France*, where ſhe continu'd, 'till ſhe heard of her Father's Imprifonment in the *Tower*, and then came back to *England*, and liv'd privately, 'till her Father obtain'd his Liberty, when ſhe came Home to him.

That on the 8th of *January*, 1691, the Duke was prevail'd on, by the inſtigation of her Enemies, to exhibit a Bill in the Houſe of Peers, to the ſame Effect with the Bill now depending, and divers Witneſſes were examin'd on both Sides; after which, and a long ſolemn Debate, and due Conſideration had by their Lordſhips of the Witneſſes, and what was Sworn by them, the 17th of *February*, they



they were pleas'd to reject the Bill without a second reading.

Notwithstanding which, the Duke was again prevail'd on, the 22d of *December*, 1692, to exhibit a second Bill in the House of Peers, to the same Effect with his first; which, after several Debates, was, the second of *January* following, again rejected.

Some Time after this, and for accommodating all Differences between them, Proposals were made to the Dutchess, which, after long Agitation, on the 28th of *April*, 1694, were reduc'd into Writing, and executed by the Duke and Dutchess: The Preamble of which Articles, is in the Words following. *Whereas diverse Controversies, Debates, Demands, and Suits of several Natures, have for some Time since been agitated and continu'd, between the said Duke, and the said Dutchess his Wife, &c. unto all which, it is at last held fitting (it being conducive to their respective quietts and ease) to have an End put, and the like for the future prevented. It is therefore hereby, and by the Parties to these Presents, declar'd and agreed in manner following; whereby the Dutchess convey'd to the Duke's Use, the Mannor of Castle-Rising, &c. And also the said Dutchess, and her Trustees, assign'd their Interest in a considerable Part of the Mannor of Sheffield in Yorkshire, to*

the Use of the said Duke. So that by these Articles, and that Deed executed thereupon, the Duke had his then desir'd Advantages.

That after the Execution of these Articles, the Dutcheſs sent for one Mr. *Negus*, the Duke's principal Gentleman, and express'd her self very sensible of the Misfortunes of the Duke and her self, and desir'd Mr. *Negus* to tell the Duke, that she would avoid all Company that should give him any Offence; and that she would not so much as pay a Visit, but where he lik'd; which Mr. *Negus* lately testify'd before the Lords, and that he acquainted the Duke with it; as also that she had several Times told him, if she dy'd first, she would leave the Duke her Estate.

That notwithstanding the said Agreements, whereby the Duke and Dutcheſs agreed to live separately, yet without his signifying any Dissatisfaction to or with the Dutcheſs, or without any manner of Notice, or previous Proceeding in the common and ordinary Course of Justice, but by taking from her that legal Tryal in the Ecclesiastical Court, which by the Laws of this Realm she is entitl'd unto, he did, on the 16th of *February* last, exhibit in the House of Peers the Bill now depending for Dissolving the Duke's Marriage with the Dutcheſs, and  
for

for enabling him to marry again. Upon which the Proceedings were so very quick, two Foreigners (*a French Foot-man and a Dutch-Cook-Maid*) lately brought from beyond Sea, being forthwith examin'd against her, charging her with Facts suppos'd to be committed many Years since, and long before the Date of the said Agreement, and on which the two former Bills were founded, that it was impossible for her to make her Defence as she might have done, if the Proceedings had been against her according to the known Laws of this Land.

The Dutcheſs thought herſelf under a Neceſſity of complying with all the Orders of the Houſe of Peers; and accordingly, as well as ſhe could, made her Defence, tho' leſs than a Week's Time was allow'd her for doing it; and upon examining the Evidence of the Duke's Witneſſes, many Contradictions appear'd, ſome whereof follow, as doth appear by the Depoſitions taken in Writing, and now remaining in the *House of Peers*.

For *Hauſeur* the Footman ſwears the Dutcheſs was at the Cock-pit, when and before he came to live with Sir *John Germaine*, and that he continued there fifteen Days after, and that after the Dutcheſs left the Cock-pit ſhe went to *Vaux-Hall*.

*Vaneſs* the Cook-Maid ſwears *Hauſeur* came to Sir *John* when the Dutcheſs was at *Vaux-Hall*.

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*Hauseur* swears, that on the 8th of *Feb.* 1692, he left Sir *John's* Service, when the Tryal was between the Duke and Dutch-  
 ess in Parliament, and after liv'd private-  
 ly six or eight Weeks, 'till he and *Vaneß*  
 could get for *Holland*, and arriv'd there in  
*Easter* following.

And yet, in another Place, he swore he  
 desir'd Leave to go, and afterwards that he  
 also went for *Holland*, as soon as the Wind  
 was fair.

But note, all the Evidence was clos'd  
 and order'd to be summ'd up the 9th of  
*February*; so that he need not afterwards to  
 have gone. And whereas he insinuates,

*Note*, It doth nowhere appear, that ei-  
 ther he, or *Vaneß*, were ever thought on  
 for Witnesses.

that he and *Vaneß* were secreted, and kept  
 from being Witnesses:

*Hauseur* swears he return'd again to Sir  
*John* in Summer 92, being often sent to by  
 Sir *John*.

Whereas *Bayly*, another of the Duke's  
 Witnesses, swears he did not return again  
 to Sir *John* in two Years after he went a-  
 way, *Bayly*, the Witness, being all that  
 Time, and three Years before, a Servant  
 in the House.

*Note also*, That this very Summer 92, to  
 wit, in *Easter* Term, the Duke brought  
 his Action against Sir *John*, which was  
 try'd



try'd *Michaelmas* Term 92; at which Time it had been more likely, if Sir *John* had believ'd he could have done him any Harm, he should have kept in *Holland*, rather than have sent for him over; especially, considering that this Fellow afterwards swears, Sir *John* swore in a Rage this Fellow would betray him.

*Hauseur* being ask'd who sent for *Vaneß* over,

He answer'd, That after he had promis'd the Duke and Lord *Howard*, to speak the Truth of what he knew, they desir'd him, if he met *Vaneß*, to desire her to come over, and speak the Truth of what she knew.

And being ask'd how long after he met *Vaneß*, answer'd, About 12 Months since.

And being ask'd when was the first Time he spoke to her about her coming over to speak the Truth, answer'd, 'Tis about a Year since.

And being ask'd how long it was since they resolv'd to come over, answer'd, 12 Months.

*Vaneß* being ask'd, whether she was not sent for from *Holland* to be a Witness, answer'd, She knew nothing of it 'till eight or nine Weeks ago.

*Vaneß* swears she was sent away on Account of the Tryal.

Where

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Whereas *Peacock*, *Hawkesworth*, and *Knight*, three Servants of the Dutcheſs, ſwore the Dutcheſs turn'd her away before the Tryal, for keeping Company with *Dutch* Soldiers, and they do ſwear a new Cook-maid there before the Tryal.

*Hauſeur* ſwears he had a Key of the Door going into the *Park*, and could come in when he would,

And yet owns, he knew but two of the Servants, one whereof is long ſince dead.

And alſo the Dutcheſs's Servants ſwear they never heard any Body had a Key, and that if any Key had been, they muſt have known of it; they alſo prove the ſhutting up, bolting and chaining the Door every Night, and opening it every Morning; and but one of the Servants remembers ever to have ſeen him at the Door, and then he rung the Bell, but came only to ſee a Country-woman of his, and to carry Letters to *Holland*, and brought Answer back to her, but was not admitted beyond the Paſſage.

*Hauſeur* and *Vaneſſ* ſwear they ſaw the Dutcheſs and Sir *John* in Bed together at *Mill-bank*.

The Dutcheſs's Woman ſwore ſhe has put the Dutcheſs to Bed, and taken her up every Night and Morning ſeveral Years, and never ſaw him in the Houſe. And two others ſwear they were conſtantly in  
waiting

waiting Night and Morning, and positively deny any Knowledge of any such thing, and say they never saw *Hauseur* there, and that *Vaneß* was never admitted up Stairs, she was so dirty a Creature, much less to dress or undress the Dutcheß, as she pretended often to have done.

*Vaneß* swears she could not tell the Places she has been at these six Weeks last past. Whereas

Mr. *May*, and two other of the Duke's Servants, swear she has been fourteen Days in the Duke's own House, with the full Liberty of the House.

*Vaneß* being ask'd whether she ever told any body of the Occasion of her going away, she swore, yes, she told it to a great many in *Holland*, and not here.

Yet being afterwards ask'd, whether she ever discover'd that she was sent out of the Way, she swore directly, No.

These are some of the many plain Contradictions and Disproofs of these Evidences, besides the great Improbability in their own Nature in several Things sworn.

But it is also to be noted, that *Hauseur* left Sir *John*'s Service in a Disgust; and so it is prov'd by *Baily*, another of the Duke's Witnesses; and that what *Hauseur* swore, could be nothing but Spight and Malice. Yea, it is prov'd, on the Dutcheß's Part, that he swore he would find a Way to be reveng'd

reveng'd of him, and that perhaps it might not be long first; and Mr. *Strange*, Mrs. *Pitts*, and her two Maids, who could have depos'd very materially for the Dutchess, refus'd to appear, tho often summon'd; being Persons not in the Dutchess's Interest or Power.

This *Hauscur* has been out of Place ever since he left Sir *John*'s Service, *April* 96, and is so still, as he swears: And so in Consequence likely to be necessitous.

Note also, That *Hauscur* swears Sir *John* gave him seven Guineas to pay the Charges of himself, *Vaness*, and another, who were order'd to be kept private, 'till they could be shipp'd off, and also for their Passage into *Holland*, which was, in Time, from the 8th of *Feb.* 92, 'till *Easter*.

Which does not look like a Bribe for a Secret of this Nature, being hardly sufficient to maintain three People, and pay their Lodgings, for two Months.

*Hauscur* would be thought a mighty Confident, so as to have a Key to the Dutchess's House, to come in and go out when he pleas'd; and yet, as well acquainted as he pretended to be with the House, and the Dutchess's Bed-Chamber, he could not tell on what Floor it was, nor what Furniture it had, nor whether wainscotted or hang'd: And when he was ask'd, which Way the Windows of the Bed-chamber look'd



look'd to, he trifled in that Question, and concluded he could see the Water, but was afraid to go near the Window for Fear of being discover'd, and yet had no Scruple of coming into the House with his Key at any Time.

These Things being observ'd, it must be consider'd, that the Facts now in Effect charg'd against the Dutchess, are suggested to be done many Years since, and were debated and consider'd before the Peers, before the Rejection of the two first Bills, and long before the Agreement for putting an End to all Controversies and Debates. Now 'tis very hard to put the Dutchess to Account again, for those very Facts, considering that, after eight or nine Years, many People are dead, others dispers'd, and not in a little time to be found out, and Circumstances of Times and Places (which in the Nature of all these Cases is almost all that is left to discover a Falstity) forgot.

The Dutchess is also under the unavoidable Necessity of proving a Negative against downright Swearing, and without any Matter introductory; and also by two mean Servants, the one turn'd out of her Place for keeping Company with Foot-Soldiers, and the other leaving his Place in Disgust, because he could not have the Play-Money.

Masters

Masters are already too much in the Power of their Servants, and if they charge their Masters with Adultery, Felony, and even Treason, it is not easily in the Power of the Master to defend himself against downright Swearing; Servants having those Opportunities of the Knowledge of Times, and Places, and Company, which cannot be deny'd or avoided, and which others have not, whereupon they may frame and build false Evidence, and many Times are of ill Principles and desperate Fortunes, and of Tempers very revengeful; so that whoever turns away a Servant, he is in his Power for his Estate, Honour, and even Life itself. And therefore, for the Safety and Freedom of Families, in other Countries they are not permitted to be Evidence against their Masters in any Matter criminal whatsoever.

Note also, That the Dutches thinks she, as an *English* Subject, has, by *Magna Charta*, the same Right to a Tryal, in the legal and ordinary Way of Justice, as the rest of the King's Subjects, especially considering that there never yet was in *England* one Precedent of a Bill exhibited in Parliament to dissolve a Marriage at the first Instance, without any previous Proceedings in the Ecclesiastical Courts; (which in these Cases is the Law of the Land) and not above five or six Bills,  
in

in above 600 Years, ever pass'd to dissolve Marriages, or make second Marriages good, even after there had been a Divorce in the Spiritual Courts; and those Bills too, in Cases generally where the Husbands were without any Re-crimination.

No Impediment appears why the Duke should not have endeavour'd a Divorce at Law, before he had attempted a Bill to dissolve the Marriage. For any Application to the Legislature, for Tryal of Matters of private Right, is improper; because there are proper Judicatures, that give that Remedy the Law allows.

To ask any thing of the Legislature, in private Causes between Party and Party, beyond what the known Laws in Force give, seems to be improper; because,

1. It is to make a Law in one Person's Case, which is not the Law in another's.

2. It is to retrospect Actions, and, after the Fact, to augment or alter the Penalty. Our Laws are certain and known, that Persons may conform their Actions to them.

3. The Courts and Forms of Law are equally the Subjects Right with the Law; and the Application to the Legislature takes away all that Right of Form and Charging; whereas a Certainty in Time to answer, and Exceptions to Witnesses,  
and

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and other legal Defences of the Fact, cannot be deny'd the meanest Subject.

The Consequence that short and summary Ways of Proceedings may have on the Settlements of Estates and Families, may be very dangerous; and tho' the Duke of *Norfolk's* Bill pass'd the House of Peers, yet a great Number of the Peers both Spiritual and Temporal, enter'd their Protest against its Passing, and their Reasons for it.

It ought to be no Prejudice to the Dutcheſs, that the next Heir presumptive to the Duke, doth not as yet appear to be a Protestant; because when the Bill, which hath lately pass'd both Houses, is become a Law, it is not likely that noble Family will be without a Protestant at the Head of it.

If any of the Witnesses formerly examin'd on the Bill in 1694, be now again produc'd; it is humbly apprehended, that as the Validity of their Testimony they then gave, was totally overthrown by a greater Number of Witnesses, so it will be again; tho' under the Disadvantage of the great Distance of Time.





*An ANSWER to a printed Paper,  
entituled, The CASE of MART  
Dutchess of NORFOLK.*

IF notorious Untruths, and false Inferences, deserve the Name of a scandalous Libel, the said printed Case is one.

The Case sets forth, That her Father, the late Earl of *Peterborough*, paid 10000*l.* in Money, and settled near 1000*l.* *per Ann.* in Lands, the Remainder thereof to the Duke and his Heirs; and a Personal Estate of 10000*l.* (after the Decease of the said Earl and Countess) and also 1000*l.* *per Ann.* for twenty Years: Besides very rich Jewels, Plate, and other Things of great Value, which the said Dutchess brought into the Duke's Family. And it's pretended, that her Grace hath, since her Separation, paid great Debts that had been contracted for the Support of the Duke's Honour and his Service.

*Answ.* Neither the Duke, nor his Father, receiv'd from her Grace's Family any more than 10000*l.* to evidence which, if the Duke pays back the 10000*l.* as the Bill directs, then her Estate is as entire, and free

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free to all Intents, as if he had never marry'd her.

As to his having 1000*l.* *per Ann.* for twenty Years to his Use, as is pretended, the Duke absolutely denies it; or that he has Jewels, Plate, or any thing of five Pounds Value from her or her Family: But soon after they marry'd, he was oblig'd to borrow 1500*l.* to buy Linnen and Household-Goods.

That within three Years, which happen'd between the late Duke's Death, and the parting of the Duke and Dutcheſs, ſhe ran him out by extravagant Expences, near 30000*l.* above his Income; to pay which, oblig'd him to ſell his Life in 2400*l.* *per Ann.* out of his Eſtate in *ſuſſex* and *Torkſhire*.

That ſhe has been ſo far from paying any Debts for his Honour and Service, that he has been ſu'd, and forc'd to pay ſeveral conſiderable Sums to Trades-men (contracted by her without his Privacy) tho' ſhe had a 1000*l.* a Year Pin-money all the while.

That upon her Refuſal to go into the Country, and her Father's reſuſing to receive her in any Houſe of his, ſhe at her own Requeſt choſe to go into *France*. But the Duke did not concern himſelf whether ſhe came back, or not, nor ever heard of her Change of Religion, 'till he felt it (as well

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well as heard it) by her suing him before the High-Commission'd Court of Alimony, which forc'd him to retire beyond-Sea, from whence he return'd about two Months before the King's Landing

It is a great Assurance that the Dutcheſs's Agents have, to mention what was ſworn by her Servants, as disproving *Hauſeur* and *Vanefs*; when it appear'd ſo plainly, that they were taught a Leſſon which they greatly miſtook; and inſtead of diſapproving, confirm'd the chief Part of the others Evidence.

And it's Pleaſant, that inſtead of *Suſannah Barrington*, who has been charg'd with the Privacy of the whole Intrigue, and appears to have been in the Dutcheſs's Service all along, and likewise ſince the bringing in this Bill, they ſhould advance that infamous Witneſs *Frances Knight* to the Dutcheſs's Woman.

What they ſay of *Bayly*'s contradicting *Hauſeur*, is upon a Miſtake, which *Bayly* himſelf ſoon corrected: And the Dutcheſs's Servants were ſo far from proving the Dutch-Woman *Vanefs* turn'd away before the rejecting the laſt Bill, that one of the Dutcheſs's Witneſſes proves her to have been the Dutcheſs's Servant while that Bill was depending.

*Martis*

*Martis 19 Die Martii, 1699.*

The Reading the Bill for dissolving the Marriage of the Duke of *Norfolk*, the second Time, and hearing Council, as well on Behalf of the Dutcheſs againſt the Bill, as on behalf of the Duke for the Bill; being the Order of the Day, before the Council was call'd in; to prevent the Inconvenience of People crouding into the Houſe, the Houſe made an Order,

That none but the Council, Solicitors, and Parties ſhould be call'd in; and that the Witneſſes ſhould have Notice to attend without, ready to be call'd in, if the Houſe ſhould think fit.

It was alſo intimated, That if the Duke and Dutcheſs did think fit to come into the Houſe, they ſhould be accommodated with Chairs, that being a Reſpect ſhew'd to the Nobility when they come into the Houſe.

And then the Council, and Solicitors, and Parties of both Sides, were call'd in, and firſt the Bill was read to them.

And then the Lady Dutcheſs's Petition was read.



The Council that appear'd, were

Sir *Thomas Powys*,  
Mr. *Dod*,  
Dr. *Pinfold*, } For the Dutchess.

Mr. Serj. *Wright*,  
Mr. *Northey*,  
Mr. *Alwood*,  
Dr. *Oldish*, } For the Duke.

And Mr. *Speaker* then spake to this Effect.

Mr. *Speaker*.] You are there, I see, Council on both Sides. The House have order'd, That my Lady Dutchess should be heard, according to the Prayer of her Petition; and my Lord Duke had likewise an Order to be heard to make good his Bill. I think the Petitioner is to be heard first, to make good the Allegations of her Petition; and when the House have heard you both, as to that, they will consider whether they will proceed to hear the Allegations of the Bill made out.

Sir *Thomas Powys*.] Mr. *Speaker*, with your Favour, Sir, I am of Council with the Petitioner, the Dutchess of *Norfolk*, against this Bill that is now before you; and I believe I may say, with some Assurance, that  
L this

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this Bill, in the Manner as it is now brought before you, is the first that ever was attempted in this honourable House. It's true, Sir, that several Years ago, this Bill, or another of the same Nature, was attempted twice in the other House, and as often rejected; but 'tis as true, at last, it does come from thence hither, but not without a Protestation there; and I humbly hope you will take Notice, that this is a Bill of Divorce in Parliament, in the first Instance, without a previous Prosecution, to examine the Fact in any of the ordinary Courts, that have Authority in these Matters.

It is a Bill, not only to divorce the Dutcheß upon a very short Warning, who hath been a Wife twenty three Years, but to render her infamous to all Posterity, by Act of Parliament; which I account to be the greatest Misfortune possible to befall any Person; and, at the same Time, it takes from her the legal Tryal of the Fact whereof she is accus'd, and which she hath a Right to, by the Law of the Land, sure as much as the meanest Subject; and which we don't apprehend she has in any wise forfeited; nor is there any Reason assign'd why his Grace has not been pleas'd to proceed in the ordinary Course. I hope, Sir, you will take Notice also, that this is, in Truth, nothing but a Suit between Part

and Party. 'Tis meerly a Cause matrimonial between Husband and Wife, began originally in the House of Peers; and as hitherto, the Beginning of Causes between Party and Party, in that House, hath been strongly oppos'd; so, I hope, it will be thought reasonable to do so always; because it deprives the Subject of that legal Defence due to him by the Law of the Land. If this was always complain'd of, when the Proceedings were in a Judicial Way; surely, 'tis a great deal worse, to begin there a private Cause between Party and Party in the Legislative Way. I can see no manner of Difference, with respect to the Loss of those great Advantages the Party is intitul'd to, only this seems rather to be the most against Reason.

Sir, 'This is a summary Proceeding with a Witness: It began but the 16th of *February*, and but a Week's Time was given to the Party accus'd of so high a Crime, and of so great Consequence to the Party accus'd, to be heard to it; and tho', perhaps, we may, with Reason enough, find Fault with the tedious Proceedings in some Courts, where Appeals and Writs of Error are justly due; as where Property is well fix'd, it must needs be reasonable. I say, from various Causes, tho' Suits in the ordinary Courts are very tedious; yet, I am sure, a summary Way of Proceeding without due

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Warning,

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Warning, or any certain Way of making Defence by any known Rules, and without Oath, - as here, without Appeal, without any Possibility of retrieving the Matter again, with great Submission. And if this must be for all that one has in the World, such a summary Way is a very terrible Thing.

I would be glad any would make it their own Case, and think with themselves, how they should like it, if their Life, Estate, and all they had, were put upon such a summary Way of Proceeding. 'Tis true, in some Kingdoms, where the Government is Arbitrary, the Proceedings are summarily, and most commonly they go together; and if we were in a Place where the Judges were infallible, and there were no false Witnesses, and Truth could be discover'd at an Instant, a summary Way would be best; but since Men are fallible, since there is Passion and Partiality in the World, since oftentimes there are notorious Detentions of Perjury, and several Things are difficult to be disclos'd, and require a reasonable Time for examining into Facts; from thence it is, that there are settled Courses for determining all Questions in Controversies between Party and Party; and that there are Rules and good Methods for the Judgment that

Whatever



Whatever you may think of this particular Case of the Dutcheſs of *Norfolk*; the Example is of mighty Conſequence to all Parents, that, perhaps, make hard Shift to give their Daughters conſiderable Portions, and may think they have marry'd them well, and made Proviſion for them and their Children. I ſay it will be hard, if their Daughters ſhould be ſent Home to them upon a Fortnight's Warning; and that Witneſſes ſhould be examin'd againſt them, without their having Notice ſo much as of the Places of their Abode; and a Thing ſhould be determin'd, before the Witneſſes can be well known. And it muſt be agreed to be of great Conſequence to all Colateral Heirs, if Marriages are ſo eaſily and ſuddenly ſet aſide for want of Iſſue, which I find to be one of the Cauſes aſſign'd for this Bill; and that it may be in a ſummary Way, perhaps, before they can well hear of it. I am ſure, this is a Matter of too great Temptation, to be put upon Men that may grow weary of their Wives, and deſire a better Fortune, or deſire Change, or may be mov'd by a thouſand Reaſons we can't think off, to revive old Quarrels, and think of Things long ſince paſſ'd, if you will ſet ſuch a Precedent of Divorcing in ſuch a ſummary Way.

This is ſure of infinite Concern to us in higher Matters. A Bill of Divorce of a

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Woman in Parliament, without a legal Tryal, is just the same Thing, as a Bill of Attainder against a Man for Treason; the one forfeits the Estate, corrupts the Blood, and takes away his Life; and the other does very little less: For, I find, according to the Bill, 'tis to forfeit her Jointure, to defame her Person, corrupt her Reputation; and tho' it leave her Life, it is left with Infamy, which is worse than Death; and in a Case of this high Moment, sure you will be careful how you alter the Course of Tryals. I beseech you, Sir, will not the Reason be the same, that a Bill of Attainder may be brought against a Man, and that Witnesses against him may be fetch'd from beyond-Sea, which he had formerly discharg'd from his Service; and put the other Side to prove what is always very difficult, the Negative, to make his Defence, which must needs require a reasonable Time for the making out of Circumstances, and laying Evidence together? Where will be the Difference between proceeding against a Man for his Life without a Tryal, and proceeding against a Woman for her Joynture, where her Name, Family, and Reputation is concern'd; and perhaps her Children, the Legitimacy of whom must come in Question? And, in a Case, where the Person, by no Behaviour of hers, hath forfeited such a Tryal, nor the Person, that prosecutes

prosecutes this Bill, can't shew that he hath been obstructed in his proceeding in the ordinary Way. I need not take Notice of what every Body knows, That we have a happy Constitution, if we can keep it; every Man can call his Wife his own, and his Estate his own; because it can't be taken away, but by legal Tryal: But if you will go into these extraordinary Resorts, when the Courts and the Law is open, without any previous Preparations for that Matter, by having a fair Examination, that the Party can't say there is a Surprise, I know not where it will end; and tho' in one Case it may be desirable, that there should be an extraordinary Relief; but will this go no farther? Can any say that?

That which we find in *Magna Charta* is not to be forgot, where there is so much Care in the several Instances of it for the preserving of Property, and the Right of Tryals, *Quod nullus destruatur, nec super eum ibimus, nec super eum mittemus, nisi per legale judicium parium suorum vel per legem terræ.*

Why? In this Case, the Ecclesiastical Law is *Lex Terræ*: And if that be to be taken away, without any Reason, why may not the Law in any other Case.

We have, perhaps, in Time of great Emergency and publick Difficulties, had

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some extraordinary Laws, grounded on extraordinary Reasons; but now we are in a Time of settled Peace, when there may be a just Determination, according to the Law of the Land, I can't see any Reason for this Proceeding, no, not in this particular Case.

I would, Sir, with your Favour, take Notice of those few Instances of this Kind, that have been in *England*, by Act of Parliament, and in what Manner they have proceeded.

There have not pass'd hardly six in six hundred Years, I think I may challenge them, on the other Side, to shew so great a Number; but those I have I shall quote: But they proceeded in another Manner than this has done.

'Tis true, where Persons have had a fair Tryal in a proper Court, and Witnesses have been examin'd, and Sentence final been pronounc'd, and where the Party, as to the Fact, hath been concluded according to the Law of the Land; when all this hath pass'd, some Instances there have been, that afterwards an Act of Parliament has pass'd to strengthen the Sentence, and to carry it farther than the Ecclesiastical Courts will allow, even to the dissolving the Marriage, and enabling the innocent Person to marry again; but you will find all those Acts are founded and  
built



built upon the Sentence in those Courts, and recite those Sentences, as a great Inducement to the passing of those Acts; and I crave Leave juit to take Notice of those. The first we find, is that made in the Case of the Marquis of *Northampton*, which was in 5 E. 6. He was marry'd to a Daughter of the Earl of *Effex*, and she elop'd from him, and was prosecuted in the Ecclesiastical Courts, and there was Sentence against her of Divorce. The Marquis from hence took upon him to marry a Daughter of the Lord *Cobham*; and after four Years Marriage of her, he obtain'd an Act of Parliament to ratify the second Marriage, which Act recites a Settlement of Divorce in the Ecclesiastical Court.

This took its Rise from Examination according to Law; and that Act of Parliament is grounded upon it, and recites it as a previous Matter necessary to induce that Act.

The next, that follows, was the famous Case of the Lord *Ross*, afterwards Earl of *Rutland*, tho' there, perhaps, was as great a Notoriety of Fact as can be pretended in this Case; and he did not stand impeach'd of any immodest Behaviour; but, even in that Case, the Divorce by the Act follow'd a Divorce in the Ecclesiastical Courts, and that pass'd with such Difficulty, that it was four Years in Hand: it began in 66.

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and was not pass'd 'till 70. I have a Copy of it, and it says, that forasmuch as *Manners*, commonly call'd *L. Ross*.

And it proceeds thereupon to enable him to marry again: But this, Sir, could not be, but by two Acts of Parliament, besides the Sentence in the Ecclesiastical Court; for he first got that Court to declare the Children illegitimate, and then, in the Year 70, the Parliament pass'd this Act.

I know of no other, 'till we come to a Case that happen'd within our Memory; 'tis the Case of a Person of great Worth, and I hope it will give no Offence when I cite the Precedent.

It was the Case of *Mr. Lukenor*, who had been grossly abus'd by his Wife, by Elopement, and open Adultery; but the Act he obtain'd went no farther, than to disable the Children born while she liv'd in open Adultery; and that Act recites a Sentence of Divorce; I have the Copy of it, and I crave leave I may read a few Lines of it; it recites, that *Mr. Lukenor's* Wife had elop'd from her Husband.

There was, indeed, a famous Case not long ago, of a Lady that was taken away by Force, and pretended to be marry'd; and an Act of Parliament came afterwards to declare that Marriage null and void; but even there was a Proceeding at Law with

with a Witness; the Person that had been concern'd, was actually indicted, and executed: It was not there to make a Divorce; and so it had been a vain Thing, to have gone into the Spiritual Court, where there was no Marriage; for it was only a Law after the Fact, Declaratory, by Way of Caution, to give the more Satisfaction that that Marriage was null and void.

Sir, the last I know of (and it may be proper for you to observe how quick these People come after it) was that of a noble Earl, that did obtain last Parliament an Act for divorcing him and his Lady. It is the Case of the Earl of *Macclesfield*; but in that Case it will be proper to take Notice to you, that there were previous Proceedings in the Ecclesiastical Court; there was a Libel exhibited against her, a Charge upon her, and Witnesses examin'd, and she had a fair Opportunity of making her Defence; there was a regular and a long Proceeding against her, and a Prosecution of her, in Order to a Sentence of Excommunication; and then there came the Earl's Petition into the House of Peers, setting forth, that there had been such a Proceeding as this, and that she stood in Contempt, having been prosecuted as far as that Court could go, after an Examination of Witnesses. In all the Cases I have heard of a Divorce by Act of Parliament

there have been Proceedings in the Ecclesiastical Court. This was the Way of former Times, but now we are beginning where the Matter ought to end.

And now the first Application is to that Place, wherein all these Instances (as I think it ought to be) was the last Resort. 'Tis true, this Method may not please the Duke; for we know his Grace is in haste, and for cutting the Knot asunder at once by the Legillative Power; but, I hope, upon these Precedents, you will think it more reasonable it should be at first untied, or, at least, loosened by a judicial Proceeding. If you will, I do not see how, in Justice, the Parliament can deny the like Remedy the next Sessions to any other that may be in the like Case, it may be in worse; for here is no Pretence of any spurious Issue. Can the Parliament of *England*, whence we take our Measures of Justice, deny the like Remedy in Justice to any others that are in the like Case? What is it that guards you from an infinite Application of this Nature, but requiring Persons to take the ordinary Course first; and to come round about to the Parliament, as the last Remedy, to carry the Sentence, perhaps, farther than the Ecclesiastical Court can do? But if Persons may come up directly hither, I am apt to think your Lobby will be crowded with Petitioners of  
this



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this Nature the next Sessions; tho' the Sessions now are long and frequent, this single Business may be so great as to obstruct all other Business; I am sure, a Committee for Adultery would have a full Employment.

Let it be consider'd, how strange it would be if some Poor Man, upon this Precedent, should come and make Application, and tell you, he stands in Need of such a Bill from the Condition of his Family; that his Wife plunders his House, sells his Goods, and lives in Adultery; and prays this Matter may be examin'd in a summary Way, because he is not able to go through the costly Course of Ecclesiastical Courts, and be favour'd with a Divorce: Would not this poor Man's Case seem to have the like Justice, or possibly more? And yet, if such a mean Man should come with such a Petition, perhaps, it would look strange; and yet, in Justice, there is no Respect of Persons; the Law in *England* is, *unum pondus & una mensura*; and if this should be done in the Case of a great and rich Man, and not for a poor Man, they may say what hath been said by some, That our Laws are like the Spider's Web, which only holds the lesser Insects.

Shall those that expect the best Fortunes and greatest Advantage by Marriage, not undergo the bad Fortune of Marriage too?

I am

I am sure, if this be so, it's a Privilege of Peerage never thought of before:

You may see, Sir, by this Bill, how Precedents grow upon you. At first, in the Case of the Marquis of *Northampton*, it was hard to get an Act after a Divorce: So it was in the Case of my Lord *Ross*: The last Sessions, in the Case of the Earl of *Macclesfield* it went farther there; because there had been a previous Proceeding in the Ecclesiastical Court, and his Lady had obstructed that Sentence; that Act pass'd before Sentence; but now we are come to have it done without so much as a Tryal to get a Divorce in the Ecclesiastical Courts, to have all pass'd at once in a summary Way, it will be but to petition the Parliament, and all shall be determin'd without a Possibility of being re-heard.

I know nothing can be said on the other side with good Reason (unless that which I heard in another Place) why they should not go to the Ecclesiastical Court, which is, that those Courts cannot divorce a *Vinculo* Matrimony; therefore it would have been a vain Thing. This may be a good Reason for them to come to you afterwards; but 'tis no Reason for them to come here at first, unless they will say at the same Time, that every thing ought to be begun in Parliament, because 'tis possible every thing may be brought to the House  
of

of Peers at last. Will they say, That all Ejectments ought to be begun originally in the House of Peers; because after the Parties have been at great Charge and Trouble in the Courts below, they may be brought thither by Writ of Error at last. This would have been a good Expedient in a Cause lately, where a Deed was try'd over and over; if this be the Rule, it would be well it were known, and made to the Law of the Kingdom; for that Law will be always reckon'd hard, which is made in one Case, if it may not be had in another; the Law of *England* does go throughout, and if it be Law for one, 'tis for another. I have but one Thing more to lay before you, and that seems worthy of your Consideration, besides all that I have said.

You observe the Bill is general, without Restraint of Time and Place, or Description, or Circumstances relating to the Fact: Now, Sir, I must take Leave to acquaint you, That so long ago as *April*, 1694, his Grace the Duke, (who complains of this Matter, as if some new Misfortune had befall'n him) having made former Complaints and Attempts for obtaining what he now desires, did, at last, in *April*, 1694, not suddenly, but by Advice of Council, with his Friends about him, after a long Time of Agitation, come to Articles  
with

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with his Wife the Dutcheſs, of which I crave Leave only to read the Preamble.

The Articles are between his Grace the Duke of *Norfolk*, and the Earl of *Peterborough*, and recites ———

It is therefore determin'd by the Parties, and agreed as followeth; and thereupon the Articles proceed to ſettle every thing between the Duke and Dutcheſs, to his own Satisfaction, and according to his own Deſire.\* His Grace hath reap'd the Benefit of thoſe Articles, by having receiv'd a great Sum of Money; and the Dutcheſs parted with her Intereſt in that great and noble Manour of *Sheffield*; his Grace hath had all that he, on his Part, was to have, and hath executed abundance of Deeds purſuant to this Agreement. Now, if after all this, there be a Proſpect of farther Advantage by another Marriage, that will not move you to give him a Liberty for a Departure from ſo ſolemn an Agreement. In what a Condition are People, that have purchas'd their Peace as the Dutcheſs has, if they may have Liberty to go back beyond this, for the Bill has no ſtint; ſurely, all Reconciliation between Men and their Wives, and all Acts towards them, and all Acts of Kindneſs are to be favour'd, and Matters of Divorce are of an odious Nature,

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\* Vide Her printed Caſe ut infra.



Nature, and not to be encourag'd after such Composure of Differences, and Reconciliation. We have Instances of some that have taken their Wives again, and liv'd comfortably afterwards; surely, it shall not be in their Power to go back, and say, Pray let us be divorc'd. 'Tis contrary to the Use of all Acts of Pardon. What is the End of all Acts of Parliament, of general Pardon, and all Statutes of Limitation, but to ease the People in such a Case? For 'tis impossible that any Person can be able to defend their Actions nine or ten Years ago, they can't keep their Witnesses alive; and therefore the Law hath often limited a Time, beyond which, Persons shall not go back; and this we think the Duke hath done by Articles, and surely they are conclusive before God and Man.

I shall say no more, but that I don't apprehend the Nation will be in any great Danger. If the Duke doth, betwixt this and the next Session, proceed in the ordinary Course, and prepare Matters against another Session; I am sure 'tis of great Consequence. No Man can deny, but we have a good Constitution; but if it is, in the Case of a particular Person, to be broken, such a Breach in this Constitution may not be very easily recover'd.

I hope, this Cause, that is precipitated here out of Time, and before those Preparations

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parations were made, that have been in all other Cases, shall be remitted to its proper Place, where her Grace will give the Duke a Meeting, if they be not before that reconcil'd.

*Mr. Dod.*

*Mr. Speaker,* I desire the Favour of a Word of the same Side. These Bills are not common; I think there are not above three Instances to be found in the Records of this Kingdom.

This Bill is to dissolve a Marriage after twenty three Years Continuance; and that not upon so many Days Notice, as there have been Years of the Marriage, for to serve the particular Purposes of one Person; 'tis a Law after the suppos'd Fact committed; the Law should go first, and the Fact follow; it is not a general Law for all the People of *England*; as such, it would have another Consideration; there is no Occasion for particular Law; 'tis a Bill from the Lords; and, in a little Time, for what I know, the Lords will prescribe to it; there is not one of these Bills for a Commoner, unless in my Lord *Ross's* Case, who was of a noble Family.

'Tis not pretended by this Bill, that the Dutcheſs hath had any ſpurious Iſſue, tho' that was the Circumſtance of one of the Bills that did paſs, and that was a material

rial Circumstance in the Case, and which is not alledg'd here. These Bills are not to be made use of, but upon extraordinary Occasions, and the utmost Extremity; and 'till then, I hope, such Bills shall not be made use of. And we think the Proceeding upon this Bill, in this Case, will appear much harder; for 'tis the first Instance of this Nature, when there has been no Proceeding in any Court whatsoever, to convict the Dutcheß of this Offence, no Citation all this while in the Ecclesiastical Courts, where the Dutcheß might have an Opportunity to make her Defence.

If those Courts have Jurisdiction in any one Thing, 'tis in Case of Matrimony: If this was brought into those Courts, the Dutcheß would be allow'd to make her Defence, not only by Way of Re-crimination, but Examination of Witnesses; a Commission might be had to examine Witnesses beyond-Sea; if she had any Witnesses there, or in the Country; she might appeal to a superior Court, and thence to the Delegates. These are all proper Defences that the Law allows, that there may be no Surprise upon the Party; and if injur'd, he may be righted in another Place. These Proceedings, we think, are necessary to go before a Bill of this Nature; for then the Fact would be plain; and if the Dutcheß had been convicted in this  
Manner,

Manner, as to the Fact, we must not have open'd our Mouths against it.

By the same Reason that a Bill is brought to dissolve this Marriage, in a little Time you may have a Bill to marry People: Be it enacted for such and such Reasons, such Persons shall be marry'd: 'This would be a much readier Way, in Case of Contracts, than any Proceedings in the Ecclesiastical Courts. And tho' they may say, the Law of *England* takes Notice of Contracts of Matrimony, as well as any other Acts, that is no Answer; for the Fact is, Whether there is any Contract of Matrimony, or no? And so it is here, Whether my Lady is guilty of the Crimes charged here in the Bill? And for this she ought to have a proper Tryal, and ought to be call'd to an Account in the ordinary Methods of Law; and then it might be proper to carry the Sentence farther than those Courts can. I hope you will be very tender of making a new Precedent; and I do not know of any Bill, before this, to convict a Woman of a suppos'd Crime; then this is the first Bill of this Nature, and you will consider, whether you will make a Precedent of it, or not. Tho' this before you, is the Case of a great and honourable Person, yet your Justice will be the same, if it should happen, that any other Man in the Kingdom should be in the same Circumstances, and willing

to



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to slip over all Tryals, whereby the Person accus'd might have an Opportunity of making her just Defence; as is the Case of this noble Lady, who is hurry'd on, after twenty three Years Marriage, to a Determination in as many Days, in this extraordinary Manner.

I hope, therefore, you will not proceed in a Bill of this extraordinary Nature, of which there is not one Instance to be given, where you have begun to examine a suppos'd Crime, but you have always left it to the Determination of the Law in the ordinary Course; and we think it ought rather to be so in this Case; because, 'tis not pretended by the Bill, that there is any Stop put to their Proceedings there; there is no Absence of Witnesses, no Incapacity; but his Grace may proceed there, to convict this Lady of the Crime he supposes her guilty of, and she will there have her just Defence; and, till then, there is no Crime for you to judge upon; and, I hope, you will think fit to reject this Bill.

*Dr. Pinfold.*

*Mr. Speaker,* I desire to speak a few Words as to the Ecclesiastical Law, which is a Part of the Law of *England*, as much as any other; for our Law does not receive *minus & minus*; and the Ecclesiastical Courts have been settl'd for several Ages,  
and

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and are govern'd by such Rules, which every Subject hath a Right to. Sir, This Bill is to dissolve the Bond of Marriage, and to give Leave to marry again; and I crave leave to shew the House what our Ecclesiastical Constitutions are in that Case, and how tender they have been in that Point, and how those Constitutions are grounded upon the Canons and Decrees of Councils.

The Cases where the Bond of Marriage is to be dissolv'd, are but few, and they arise before Marriage; 'tis in the Case of the Pre-contract, or Nonage, or Consanguinity; and there the Bond is broken by the Sentence of the Judge, and the Person hath Liberty to marry again: But for what comes afterwards, whether it be the Case of Adultery, or any thing else, the Law Ecclesiastical, which, as I said before, is Part of the Law of *England*, hath been very careful not to dissolve the Marriage.

The 48th Canon says, If any Lay-man shall put away his Wife, and marry another, he shall be excommunicated: That was the Sense of those early Days; and sure they did not think it an indifferent Matter, because they punish'd it with so heavy a Punishment. So it was in the Council of *Arles*, 314; and there it was decreed, That if a Man took his Wife in Adultery, he should be forbidden to marry. There, what was to be done? Council

cil should be given him not to marry while she liv'd, though she was an Adulteress.

And in the Council 402, the *Neapolitan*, Evangelical, Apostolical Council, it was decreed, That if a Man was divorc'd from his Wife, or Wife from her Husband, they should remain unmarried. This was the Sense of the antient Canons and Councils, and this is receiv'd into our Ecclesiastical Constitution. In the 15th Year of the Reign of Queen *Elizabeth*, in the Chapter of Divorces, 'tis said, That upon a Sentence of Divorce, there must be an Admonition, and a Prohibition, that the Party shall not marry again.

And in the Year 1602, in the Beginning of King *James's* Reign, there was a farther Provision made, to keep them from being marry'd again, and that was this, That they should give Bond and Security they should not marry again. This is certainly our Ecclesiastical Constitution, and grounded on the Sense of the Ancient Canons.

Now it remains, to shew some Advantage this would have had, if she had had the Tryal, which, of common Right, is due to the meanest Subject; she would have had the Advantage of Challenges, which she can't have here; for here the Evidence must drop from the Witnesses Mouths,

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Mouths, who are Foreigners, and have been long absent; there they must give an Account of themselves, which here hath not been done by any Body. This Lady might have given her Exceptions to those Witnesses, and had a Commission into *Holland*, to have examin'd how these Witnesses have behav'd themselves, and whether these Persons were to be believ'd and credited; here she would likewise have had Liberty to give an Account how this Design began. I do now speak with respect to the Duke; but I do say, it does seem to have began a Year and a half ago. She would likewise have had the Advantage of a thorough Reconciliation; and here are some Deeds, in 94, between the Duke and the Dutcheß, which I hope, if the House will take an Account of, will have its due Effect: She would likewise have had the Advantage of an Appeal, the common Right of the Subject, and grounded upon good Reason; and in case there hath been a Neglect in the first Instances, the Party may be righted in another Place.

By this Bill she is debar'd of the Advantage of Re-crimination, to which she hath a Right; for the Text-Law is —

And the Text-Law, *de Divortiiis*, is the same, were the Charge most true, which we do not admit; yet, if she can  
prove





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against the highest Injury that can be offer'd; the Rights of his Marriage-Bed have been Invaded; and he comes for that Relief here, which no other Court can afford him; for the Learned Doctor on the other Side, tells you plainly from the Canon Law, that there can be no Divorce, *à Vinculo Matrimonii* in their Courts. Now to send us to a Court for Relief, that they tell us before-hand can give us none, is in Effect to tell us, we shall have none at all.

The Bill is founded upon the Suggestions contain'd in the first three or four Lines in the Bill, That the Dutchess of *Norfolk*, hath for divers Years liv'd in Separation from the Duke her Husband, and hath had unlawful Familiarity, and Adulterous Conversation with Sir *John Germaine*, and is Guilty of Adultery on her Part, and hath broken the Bond of Matrimony: These are the Reasons for which the Duke desires this Bill may pass; 'tis for the Adulterous Conversation of the Dutchess, not for one single Act, but a continual Series of the like Acts for many Years; for we shall not give only one single Act, or Instance, in Evidence, but prove this Conversation for several Years, beginning in Eighty Seven, and carry'd on to the latter End of Ninety Five.

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It hath been objected, That this is the first Instance of a Divorce, the first Bill of this Kind, where there has been no Proceedings in the Spiritual Court: That 'tis the first Bill of this Kind, we deny; but that there have been no Proceedings in the Spritual Court, we own; for the Earl of *Macclesfield's* was the same, to all Intents and Purposes, as this is; for tho' 'tis true, they had been in the Spiritual Court, yet, 'tis as true, they came here into Parliament, before any Sentence in the Spiritual Court: Now, to what Purpose is it to go into the Spiritual Court, and not to stay for the Determination of that Court, if the Judgment of that Court is to have any Weight: In the Case of the Earl of *Macclesfield*, 'tis true, they had been there, and examin'd Witnesses on one Side, with all Precipitation; yet would they not stay for a Sentence there, but quitted their own Proceedings, and came to the Parliament. Now I do take it, that they had better never been there, than to have come away before Sentence. For when they were in the Spiritual Court, and were proceeding there, to leave that Court, shew'd rather a Mistrust of their own Case. But it was no Objection in that Case, That it was taking it away from the Jurisdiction of the Spiritual Court. We don't come to you for any thing the

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Spiritual Court can grant us; For that Court goes no farther, if the Fact be prov'd, then to make a Separation *à mensa & thoro*; but the Bonds of Marriage is to be continu'd still. Now, with Submission, this is to punish the Innocent instead of the Guilty. What would the Dutcheſs desire more, than to be separated from the Bed and Board of her Husband, to be left free to accompany Sir *John Germaine*? But we go farther; for we come to the Parliament to dissolve this Marriage, for that which is allow'd, by several learned Writers, to be a justifiable Reason for so doing, for Adultery committed by the Wife, 'tis expressly said, That a *Man* shall not put away his *Wife*, except in Case of Fornication. This Text plainly allows, that, in Case of Fornication, a Man might put away his Wife; but the *Popish* Canons (the Doctor has nam'd,) have put a Construction upon it; say they, you shall put her away, but how? She shall be remov'd from your Bed and Table, but you shall not marry another. Then they say, There is no Precedent of a Bill of this Kind, but there hath been a previous Prosecution in the Spiritual Courts; I agree, in the Marquis of *Northampton's* Case, that that Act does recite the Proceedings in the Spiritual Court; but that Case is stronger than this, for there the Marquis of *Northampton*



*thampton* had marry'd, even in the Teeth of their Canon Law; and comes afterwards an Act of Parliament to make this Marriage good; and there the Divorce was no Ingredient upon the passing of the Bill, but the Parliament Enacted the Marriage to be Lawful. In my Lord *Ross's* Case, there is no Mention of any Divorce. I appeal to the Journals of your own House for that. But notwithstanding the Divorce, the whole Matter was examin'd over again; Witnesses were examin'd, both in the House of Lords, and here, upon the first Bill which was brought, which was to Illegitimate, and Bastardize the Children; and the Witnesses prov'd, that my Lord *Ross*, and his Lady, had not laid together for a long Time; and that she had kept Company with others; so that the Parliament did not found the Bill upon what had been done upon the Divorce.

I appeal to your own Memory, that in the Earl of *Macclesfield's* Case, there was no Use at all on that Side, the Bill was brought, that there had been Proceedings in the Spiritual Court; nor is any such thing recited in the Bill, but only an express down right Charge of Adultery; nor was it proper for them to have mention'd any Proceedings in the Spiritual Court, since they wav'd that Prosecution; but we, on the other Side, insisted

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on it, as a Reason why the Parliament should not proceed in it, it being to take upon them an original Jurisdiction; but we were then answer'd, by a Learned Gentleman against this Bill, That it was in vain to go there, for they could not give the Remedy that might reasonably be expected. I beg the favour to mention a Case or two, where Divorces have been in Parliament, and there have been no Proceedings in the Spiritual Court: One of them was the Case of Mrs. Knight, who was marry'd *infra Annos Nubiles*, to Mr. Goodwin. Every one knows, that a Marriage, *infra Annos Nubiles*, is a good Marriage, and if the Woman be above Nine Years Old, she shall be Endowed; and yet, notwithstanding, for some irregular Proceedings, without going into the Spiritual Court, they came into Parliament, and a Bill was pass'd, by which this Marriage was dissolv'd, and, I think, 'tis expressly Enacted, That she shall not marry 'till such an Age. This goes farther; for here I am sure the Doctor would have complain'd, and told you, if there had been Reason to dissolve the Marriage, they could have done as great a Feat in the Spiritual Court; That they could have examin'd Witnesses upon Oath, and could have told you whether there was proper Evidence;

yet

yet the Parliament, without any regard to what they could do, would assert their own Jurisdiction.

The Case of Mr. *Wharton* was mention'd on the other Side, and therefore I need not say any thing to it. There was nothing of Divorce, nor needed any.

They say this Bill begins where it is proper for Matters of this Nature to end; and that after we have taken a Turn into the Spiritual Court, and travell'd three or four Years there, then it will be fit for the Judgment of Parliament. I would know if they had been seven Years in that Court, (and perhaps if we come there, we shall not get out sooner) to what Use the Examination of that Court would be. This House, I presume, would not let those Depositions be read here, especially if the Witnesses to these Facts were living.

They say, This is a very summary Way of proceeding, it may be too quick for the Dutcheſs; but you may be pleas'd to consider, that there was a Bill brought into the other House some Years ago and rejected; upon what Terms, that will rest upon us, to shew you by and by.

But the Matter was, The Witnesses that prov'd the Fact were sent out of the Way by the Dutcheſs and Sir *John Germaine*, when things were under an Examination; and we hope a Matter of this Nature ne-

ver shall be baffled, by keeping the Evidence out of the Way.

We told them long ago who the Witnesses were, they were the Dutchess's Servants, such as they thought fit to intrust.

They say this Bill deprives the Dutchess of her Tryal. I hope no Body thinks the Parliament will pass a Bill, without due Examination of Witnesses, and legal Proof of the Fact; if so, what Matter is it, whether the Proof be made before the Parliament, or some inferiour Court; if the Dutchess be guilty of this Crime, we come here for Relief, which the Spiritual Court, the Doctors tell you, can't give us; since the Dutchess hath broke the Bond of Matrimony, we come to you to dissolve that Marriage, and I hope we shall have it.

The Doctor hath insisted on one Thing that I think is very extraordinary. He tells you by the Rules of their Law, if the Woman can Re-imminate, and prove her Husband guilty, in such a Case, they must set the Fault of one against the Fault of the other.

I wish the Doctor could have told you the Offence had been equal; that the Injury to Families had been equal: A Man, by his Folly of this Kind, brings no spurious Issue to inherit the Lands of his Wife, but the Woman deprives her Husband of any Legitimate Issue; for when she



He converses in this Manner with another Man, the Issue may be equally look'd upon to be that Man's, if not more; and this Lady hath kept this Conversation ever since the Year Sixteen Hundred Eighty Seven, and left the Duke.

One Thing is farther objected, and they insist upon certain Articles of Agreement in Ninety Four, and they read to you the Preamble of them: Why Sir, The Articles if they come to be read through, I am sure it wont amount to what they pretend; it does not amount to this, That she should live after her own Pleasure: Indeed she was to have the Use of her Household Goods, and Servants, and live where she pleas'd, but that will not justify her in her Way of Living.

Then to tell you, These are Matters of a long standing; They are so, and of a long Continuance; for if my Instructions prove true, we shall prove this Scene of Adultery for matter of eight Years successively, and that by Servants that were privy to the Intrigues, who were sent away to *Holland*; but no sooner was the Bill baffled, but the Man was sent for again, and the same Conversation continu'd that was between the Dutchess and Sir *John Germaine*, before he left *England*.

The same was continu'd after he came back to his Service in 1691, only they

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were something more cautious, and People were not admitted so familiarly, to see them in Bed together in 1692, and so it continu'd 'till 1695.

They mention'd the Statute of Limitations, which was to put an End to frivolous and vexatious Actions; but how they can apply it to this Case, I can't see, because a Man shall not bring frivolous and vexatious Actions after a long Distance of Time; therefore a Man shall not complain, when he hath receiv'd the greatest Injury that can be done to Mankind.

*Sir*, They are kind to us again, in recommending it to the Duke, to go into the Spiritual Court 'till next Sessions; but we think we are in a proper Method here for that Relief which the Spiritual Court cannot grant; and since we have so good Reason to come here, if we prove the Fact, I hope this High Court will not send away a Complaint of this Nature, without such Relief as is suitable.

*Mr. Notley.* *Sir*, I am of the same Side. I would beg Leave to say this, as to what the Council have said in relation to the Evidence, That there were three Witnesses examin'd upon Oath, in the House of Peers, before the Bill did pass there, and I believe they are aware of that; and that when you hear our Witnesses, there will be

be no Answer to be given on their Side; and indeed the Witnesses they brought, were so far from contradicting our Witnesses, that they did really confirm them. But this is not the Case now; what our Evidence is, or whether it be fit for you to believe them, that will be when you have heard them; and for the matter of the Time, that you can't take Notice of neither, 'till you hear our Evidence. But this I may say, we shall bring a Man that will speak to within four or five Years.

But the Matter they apply themselves to, which is material, is, Whether it is proper for you to proceed upon this Bill; that is, to give such a Relief as we desire, by dissolving this Marriage. And in the next Place, Whether this be a proper Time to ask this Favour.

For the first, the Learned Doctor tells you, 'tis not proper at any Time to do it; for he would have the Canon-Law govern here, as it does in their Courts. But the Council, on the other Side, have cited you several Precedents where it hath been done. In the Case of the Marquis of Northampton, the Second Marriage was contrary to the Canon-Law, and yet that Marriage was confirm'd according to God's Law. And this Bill is to relieve against the Canon-Law,

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Now, whether we are here in a proper Time, Sir *Thomas Powys* has said a great many Things, which may be proper to many other Purposes. One Argument was, because the Witnesses can't be upon Oath, but that we know will not prevail in this Place. In the next Place, they except, because this Proceeding is in a summary Way, I would know of them, Whether there is not the same Objection to all Proceedings before a Jury, That they have no Notice what Witnesses will be produc'd.

Then in the next Place, they bring a great Argument from the Recital of some of these Bills, that there have been before a Sentence in the Ecclesiastical Courts. Now, 'tis true, they have been so in some of those Cases; but I beg leave to observe, That in the Case of the Marquis of *Northampton*, the Bill was not to confirm the Sentence, or to enable them to marry, but to deliver them out of the Hands of the Ecclesiastical Courts, who said, it was not Lawful in that Case to marry; for they were marry'd before.

I beg Leave to say, That in the Case of my Lord *Macclesfield*, there was no Notice in the Bill, that came down to you, of any Proceedings in the Ecclesiastical Courts. And I take this to be the Reason, because there was no Sentence; though where there was a Sentence, they had good Reason to take



take Notice of it. And I think there is as much Certainty, and as good Ground to proceed on this Bill, as in the other Case; for the Witnesses have been already examin'd in the House of Lords. In the Case of my Lord *Ross*, there was no regard to the Determination of the Ecclesiastical Courts, as a Guide to the Parliament; and it was look'd upon as of no Consequence, for the Witnesses were examin'd again.

'Tis true, when we came before you without such a Proceeding, we came under this Disadvantage; you will be sure to expect a plainer and fuller Proof; but for that, we will undertake to make the Fact so plain, that they can't give the least Pretence of Answer to it.

We are here asking that we can't have any where else. Their great Design is Delay, and that we have learn'd from the Civilian, who tells you their Methods are very grave and deliberate; and that they may have a Commission to examine Witnesses beyond Sea, and that is to inquire how their own Servants have liv'd beyond Sea.

As to what Sir *Thomas Powys* would have, that is, that we should go into the Spiritual Court, and apply our selves again here next Sessions; I do not think the Legislature will send us back to ask that in the Spiritual Court, which both have submitted

mitted to; for after the Duke had miscarry'd in the Relief he sought by another Bill, by the Dutches's sending the Witnesses out of the way, why, truly, after that, to prevent any Prosecution in the Spiritual Court, the Dutches submitted to a Separation by Articles; and that was all the Duke could have pretended to by the Ecclesiastical Law; we follow her upon that, and come to enforce that Separation, and to make it effectual; and for that which we humbly hope will be thought but Justice to the Duke, that is, to be deliver'd from this Wife, and to have Liberty to marry again; we think there is no occasion for Delay, and that no Body can be hurt by a Precedent that carries Relief in this Nature, and delivers us from a Law, which, in the Days of Popery was put upon us. Upon the whole Matter, I hope you will think that we are here very properly for Relief, and that we shall have the Favour to call our Witnesses.

*Dr. Oldish.* Sir, The great Objection against the passing of this Bill, was, because Witnesses had not been examin'd in the proper Court. 'Tis very true, generally speaking, in Cases it ought to be so, but here is a very great Exception to that Rule, and which I think can't admit of an Answer, and that is the Notoriety of the Fact; and in that Case they begin with Execution.

And

And if that be so, I think there never was a clearer Demonstration in the World ; for when formerly the Dutchess came to give in her Answer, in the House of Lords, to the Charge against her, she did declare, That in the Year 83, or thereabouts, she went out of *England*, and tarry'd three Years, and return'd about the Time of the *Revolution*. And it does plainly appear there, beyond all Question, that she was at *Lambeth*, and went under the Name of the Lady *Becknam*, and was attended by one *Keemer*, who went then by the Name of *Goodman*: Besides this, there are Witnesses that speak to particular Facts. Now, I say, here is that which amounts to Demonstration, and where there is a Notoriety of Fact, that is, an Exception out of the General Rule, and 'tis proper to begin with Execution.

There is an Exception to the General Councils and Canons, that have been mention'd, That there shall not be a Divorce, *à Vinculo*. Sir, I say, it was an Ecclesiastical Constitution, which was against the Law of God, and 'tis demonstrably so ; for where our Saviour says, *That a Man shall not put away his Wife, except in Case of Fornication* ; it is plain, that in Case of Fornication he may.

There is another thing insisted on, and that is, That there was a Reconciliation between the Duke and his Dutchess. 'Tis true,

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true, a Reconciliation should drown all Things before that Time; but when the Law takes Notice in Case of a Relapse, that does *recrudescere*, it rubs upon the old Sore; and then that, which was before laid asleep, is brought again upon the Stage, and will return with greater Vengeance. And we have plain Proof of her living in the same Manner since, as before.

But they would insinuate to you, That in case there was a Tryal in the Ecclesiastical Court, there might be a Recrimination; but there must be a Compensation, which can't be thought in this Case; for I think in this Case, under Favour, there is no Comparison. I don't think they are *Paria*; for 'tis impossible for the Husband to do that Injury as the Wife may; for she may bring a Bastard into the Family, and then the Estate does not go according to the Law of God and Nature; for every Body desires his own Blood should succeed him.

Sir Thomas Powys. Sir, I shall say but very little. But three or four Things have been mention'd on the other Side, which they offer, as if they conceiv'd them to have great Weight, and yet they seem to me as very capable of being answer'd; and I crave your Favour to do it.

They have gone much upon the Proofs that they are ready to make, and I think



not very properly, because we speak against their Proceeding upon this Bill; but I am sure it turns upon them, for according to their own shewing, they are very well prepar'd to proceed in regular Course; for they have their Witnesses ready, and nothing does obstruct them.

Mr. *Serg. Wright* mention'd a Thing, which, I must confess, I was surpris'd in; for when I told him he could not find any Precedent of such a Bill as this, without a previous Proceeding in the Spiritual Court, Mr. *Serg. Wright* said, it was quite otherwise; and, to shew you it was so, he cited two Cases, where there was no Marriage; now I always understood a Divorce must be in any Case where there was a Marriage; for the Case of Mr. *Knight's*, that was very lately; that was the Case of an Infant, who they pretended to have marry'd, *infra Annos nobiles*; and therefore, says he, the declaring of that Marriage to be Null and Void by Act of Parliament, was a Divorce. The other was the Case of Mrs *Wharton*, which was no Marriage neither, for Marriage must be by Consent, and that was a Force; and that he fancies to be a Case where there was a Divorce too, without proceeding in the Spiritual Court; and yet, of his own shewing, it was no Marriage.

Another Thing I am much more surpris'd at. We insisted, That they would not shew  
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an Act for making a Divorce, without giving the Party an Opportunity to make a Defence; and the Doctor says, In common Cases it ought to be so; and they cited the Case of the Earl of *Macclesfield* we first mention'd; and the Doctor told you the Progress it had; and that there was a full and regular Proceeding of great Length of Time; and that my Lady *Macclesfield* had all her Witnesses examin'd; and my Lord prosecuted her to an Excommunication, which, is in Effect, a Sentence; for it is in our Law, as in Case of Outlawry: This he calls a Precedent, wherein they proceeded to get an Act of Parliament, without a previous Proceeding in the Spiritual Court.

He tells you, in the next Place, That notwithstanding the Divorce in the Case of my Lord *Ross*, the Parliament did examine Witnesses: 'Tis true, they did; for I don't think they will so entirely pin their Faith upon those Proceedings, as to have no other Satisfaction. But will he therefore say, they took no Notice of it, when 'tis the Foundation and Ground of the Bill?

He tells you in the next Place, that the Crime does not seem equal between the one and the other; and so, in some sort, they ridicule the Doctor's Notion of Recrimination: But I apprehend the Doctor  
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is right in it; for it would be hard, if a Man should marry a young Woman, and give her an ill Example in his own Family, (I do not say 'tis in this Case) and bring her acquainted with loose and ill Company, and by his Example or Provocation, lead her into the same Offence. Would that Man deserve to be rewarded with a new Wife, and another Portion, because his first Wife had only follow'd his Example?

They say, The Offence is not equal, because the Man brings no Children into the Family.

I doubt it happens oftentimes to them that go abroad, that they bring Home that to their Wives, which sticks longer by them than their Children.

Then to come and say, The Articles can't be of any Use to us at all; and to imagine, that we use the Articles so, that the Dutcheſs might be at perfect Liberty to live in Adultery: I wonder how that Conceit hath follow'd him thither, when we told him, We had not such a Thought, as to live in Adultery; but they do direct her to live separate; and so we us'd them as an Answer to that Part; we us'd them likewise as an Act of total Oblivion and Remission of any thing beyond that Time; and, I hope, to such Purposes, they shall be thought sacred.

Now

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Now, I beseech you, Sir, on the whole Matter, have they, on the other Side, said one Thing, but what does totally tend to bring all Cases of Adultery immediately before you? Have they distinguish'd this Case from the Case of any other Person? And then, if they have not, I do not see, from henceforward, that any but Fools will go to the Ecclesiastical Courts for Relief: For, says the *Serjeant*, they cannot give them a final Relief, and enable any Person to marry again; and therefore, let no Body think to go there again; but here is a Relief to be had worth a Man's having. But, I hope, we shall have the Benefit of the Law, as it is, 'till you think fit to alter it; and then you will erect some Judicature, where People may have their Trial. Now, therefore, the Argument goes too far, or it argues nothing at all; because, if there be any thing in it, it goes to take away the Proceedings of those Courts totally.

But tho' those Courts cannot do all that these Gentlemen desire, they can do what is very proper to be done. They can examine Witnesses, and pronounce Sentence, and give the Party a full Opportunity of knowing the Accusation and Accusers; and then the Cases, we have mention'd, have had the Aid of an Act of Parliament.

Sir,



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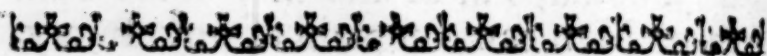
Sir, We have spent a great deal of your Time already : I hope, since you see what Use they make of the last Precedent of my Lord *Macclesfield*, where he did proceed to an Excommunication; now from thence they argue, that you should proceed originally in this Case. When is the Time to make a Stand, but in the first Case? And then no Man can complain of any Injury. If you grant this to my Lord, I think, in Justice, you cannot deny it to any other that stands in need of it. I believe, there never was the like before; and therefore, I hope, you will put a Stop to it here.

Mr. *Dodd*. The Gentlemen on the other Side have told you, that our Saviour hath said, *That no Man should put away his Wife, except for Fornication.* 'Tis true, the Text is so; but he cannot shew you any Text, wherein our Saviour says, *That the Man may marry again, tho' he might put his Wife away.* Another Thing was said, as to the Proceeding in the Ecclesiastical Courts Dr. *Oldish* says, There is to be nothing but Execution, where there is a Notoriety of Fact. And here the Fact is notorious; and therefore you may come up to order Execution: But that is a strange Doctrine to our *English* Constitution. Would they hang one first, and try him afterwards? That would make Work. Let the Fact be  
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never so notorious, yet 'tis the Right of all the People of *England* to have a legal Tryal; and, I hope, you will not interpose, 'till there hath been a regular Tryal in another Place.

Then Sir *Thomas Powys* offer'd to produce the Articles, but they were admitted.



Lunæ 25 die Martii, 1700.

*The House resolv'd it self into a Committee of the whole House, to consider of the Duke of Norfolk's Bill.*

*Sir Rowland Gwyne took the Chair of the Committee of the whole House.*

*And the Council and Solicitors were call'd in, and the Bill read to them. And then Mr. Northey, of Council with the Duke, open'd the Evidence thus.*

*Mr. Northey.* **I** Am of Council for the Duke of Norfolk. I shall not trouble you now (because I think it not fit) to say any thing for the Bill, for that you have approv'd of by Commitment of the Bill; and declar'd it to be a reasonable and just Relief against the Dutcheſs, for the Adultery charg'd in the Bill. I shall not spend any of your Time in aggravating the Crime of Adultery.

But

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But that which is incumbent on his Grace's Council now, is to lay before you the Proofs of the Fact suggested in the Bill. And the Facts to be prov'd are the Introduction of the Bill ; That the Dutcheſs has liv'd for divers Years in Separation from the Duke ; and had unlawful Familiarity, and adulterous Conversation with Sir *John Germaine* : And for that Fact we will call our Witneſſes.

And our Evidence will make this out to you, as plain as 'tis poſſible to expect a Matter of this Nature to be prov'd.

However, I think they have manag'd Things in that Manner, as we ſhall be able to give as plain a Proof of theſe Facts, as might be expected of thoſe Acts which are in their own Nature moſt publick. However, in the Nature of the Thing, there were but a few Perſons to be entrusted with it, and thoſe were generally Servants who had Attendance on the Dutcheſs's Perſon. We ſhall produce you Servants, both of the Dutcheſs, and Sir *John Germaine*. And, I hope, it cannot be an Objection, That they are Servants ; for, to object to them, for that Reason, is to ſay, You ſhall prove the Fact, but you ſhall have no Witneſſes ; for theſe are Facts that cannot be prov'd, but by ſuch as were concern'd with the Dutcheſs.

For

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For our Evidence, it will fall out to be this, The Duke and Dutcheſs were marry'd in the Year 1677, and they liv'd together 'till about the Year 1685; and then the Duke having ſome Account of her Converſation of this Nature, they did part, and afterwards ſhe came to live openly with Sir *John Germaine*; for in *May*, 1689, the Witneſſes will give you an Account, that for two Months together ſhe lodg'd with Sir *John Germaine* at the Cock-pit; and they liv'd there as Man and Wife, as the Witneſſes phraſe it. During the Time they liv'd there, there was a near Relation of Sir *John Germaine's*, Mr. *Daniel Germaine* his Brother, and Mrs. *Briane* his Siſter, did frequently come to the Houſe; and two of the Witneſſes were frequently in the Room while they were a-bed together.

After two Months Time, the Dutcheſs thought fit to be a little more private, and it was given out ſhe was gone to *France*; but in Truth ſhe remov'd to *Fox-Hall*, to a Houſe that was taken by Sir *John Germaine's* Brother, and went by the Name of my Lady *Beckman*; and ſhe liv'd there two Years ſucceſſively; and Sir *John Germaine* came there frequently once or twice in a Week, and lay there a-Nights. During that Time, we have two Witneſſes, that did attend the Dutcheſs, as well as at the Cock-pit:



Cock-pit; one of them is *Ellianor Vanesse*, who was hir'd by Sir *John Germaine's* Sister, and liv'd with the Dutchess at the Cock-pit two Months. We have a second Witness, one *Hauseur*, who was with Sir *John Germaine* at the Cock-pit 15 Days before the Dutchess went to *Vaux-Hall*; and afterwards he went to *Vaux-Hall*, when she remov'd there, and stay'd with her all the two Years.

These are both Foreigners, and Dutch People; and it was reasonable enough to expect foreign Witnesses, when an *English* Dutchess had a foreign Gallant. They are such as he thought fit to entrust about her.

After she had liv'd two Years at *Vaux-Hall*, [this brings her to the Year 1691] she remov'd Home again to her House at *Mill-bank*; and there Sir *John Germaine* and she were frequently together, and have been seen a-bed together.

This brings us to the Time when the Duke having an Account that she had this Conversation with Sir *John Germaine*, brought a Bill into the House of Peers for a Divorce; but it happen'd, that the Dutchess and Sir *John Germaine*, to avoid the Condemnation, kept the Witnesses out of the Way, and afterwards caus'd them to be sent into *Holland*.

The Woman stay'd abroad 'till about three Months ago; but the Man return'd

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before into Sir *John Germaine's* Service; and he will give you an Account of what Observations he made there, for the Familiarity continu'd between them then. He was admitted into the Room where they us'd to be; and he will give you an Account how he hath seen them frequently together. And he brings it down to within the Year 1695.

We have another Witness, one *William Bayley*, who likewise was a Servant to Sir *John Germaine*, and came into his Place when *Hauseur* went beyond-Sea. He is an unwilling Witness, because he hath been preferr'd by Sir *John Germaine*: But when he was upon his Oath in the other House, he did give an Account, That while he continu'd in Sir *John Germaine's* Service, notwithstanding this publick Reproach in 1695 and 1696, she frequently came to Sir *John Germaine's* House, with one *Keemer*, whom she had great Confidence in; and one *Susanna Barrington*, I think yet in the Dutcheſs's Service. And this Mr. *Bayley* will give you an Account, That his Master was often from Home; and when he was so, he us'd to carry his Linnen to this *Keemer*, who was the Dutcheſs's Servant, or this *Keemer* would come to him for it; and this will bring it down to 1696. There are several Witnesses to confirm this; but we think, with Submission, after the Dutcheſs

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Dutcheſs had been ſo accus'd in the Houſe of Lords of ſuch a Familiarity, any Evidence of a Converſation between them afterwards, is as much as a thouſand Witneſſes; for no Woman that valu'd her Reputation, having been accus'd as ſhe was, would have had any Converſation with Sir *John Germaine* afterwards. But we don't want Circumſtances to ſupport the Evidence of Fact: We have as plain Evidence in this Caſe, as can be expected in a Caſe of this Nature. We will ſpend no more of your Time, but beg Leave to call our Witneſſes.

Mr. *Atwood*.] Sir *Rowland Gwynne*, pleaſe to favour me a few Words on the ſame Side: I ſhall not miſpend the Time of the Committee, in repeating any thing ſaid by Mr. *Northey*; I ſhall only obſerve, that the Witneſſes *Hauſeur* and *Vaneſſe* ſay, That *Suſanna Barrington* was privy to this adulterous Converſation; and this *Suſanna Barrington* has withdrawn herſelf ſince the Bill was depending in the Houſe of Lords.

'Tis farther prov'd, That Mr. *Daniel Germaine* and Mr. *Brian's* Wife were in *England* lately, and that theſe were privy to the ſame Converſation.

Then the Witneſſes were call'd in, one by one, and Interpreters allow'd.

The Witneſſes that were examin'd before the Committee of the Commons, were, *El-*

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*Iena Vanesse, Nicholas Hausieur, William Bayley, and Anne Read.*

But all, except *Anne Read*, were examin'd in the House of Lords; and their Evidence there being at large set forth, the Reader is referr'd to the same. The Evidence of *Anne Read* is as follows.

*Anne Read* being ask'd, Whether she had ever seen the Dutchess go to Sir *John Germaine's* House, and when, says, That about April 1692, (which was soon after the Duke's Bill had been rejected in the House of Lords) she saw the Dutchess of *Norfolk* go in a Chair to Sir *John's* House; that the Door was immediately open'd upon her Chair's being set down, and she went into the House with her Mask off.

She being ask'd, Whether she had seen Sir *John* come to the Dutchess's House, and when; says, she, within a Twelve-month last past, or thereabouts, follow'd him to the Dutchess's House about three of the Clock in the Afternoon, and that she did not see him come out.

After the Witnesses were examin'd on the Part of the Duke of *Norfolk* for the Bill, Sir *Thomas Powys*, of Council with the Dutchess of *Norfolk*, being call'd upon to make Defence, spake to this Effect.

[Sir *Thomas Powys*.] I am at a Loss, Sir, and under some kind of a Surprise, because,



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cause, as far as I can apprehend, you call upon us to make our Defence. I hope, in a Case of such Moment as this is, (and, it may be, there cannot be greater) and since you are pleas'd to take this Case out of the usual Way of Tryals, and to try it in the first Instance, you will be pleas'd, that we should be fairly and regularly heard; and since it was not allow'd us, upon our being heard against the Bill, that we should have a Time to make our Defence. Now we have heard what the Witnesses swear, we shall desire but a short Time, no more than what is absolutely necessary to make our Defence. This hath spent us six Hours already; and, I am sure, the Witnesses that have been examin'd, have given such Variety of Answers, that it doth afford a great deal to be said to it. We have likewise a good many Witnesses to be examin'd; but I am far from proposing anything to delay it. We had a Weeks Time allow'd us in the House of Lords; but that is no Rule for you, and we don't expect it here. But even while we are at this Bar, a Person from a very worthy Member, gives us Intelligence, upon Sight of this Cook-Maid, of a Matter that will defame her; and he will be ready to make it out, that she was turn'd away for being a common Thief in *Holland*: And therefore, Sir, you see how Time is necessary, in Point of Accidents

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cidents that do happen; and I cannot make our Defence now.

Thereupon the Council withdrew; and the Committee having consider'd of the Desire of the Council for the Dutches, to have Time allow'd them to make their Defence, were of Opinion, That the Council should proceed then to make their Defence; and Candles were order'd to be brought in.

And the Council being call'd in again, Sir Rowland Gwyne, being in the Chair of the Committee, acquainted them with the Determination of the Committee.

Then Sir Thomas Powys observ'd upon the Evidence that had been given, and insist-ed, that the Evidence given before the Committee of Commons, did differ from the Evidence given by them upon Oath in the House of Lords; and offer'd to produce the Examination of the said Witnesses upon Oath in the House of Lords. And an Objection being made, that such Examination ought not to be read in that Case, as Evidence before this Committee; the Council withdrew, and the Committee consider'd of the said Objection, and were of Opinion, that the said Depositious should not be read.

And Council being call'd in again, were acquainted with it, and that if they had any

Witnesses

Witnesses, *viva voce*, to encounter their Evidence, they might produce them.

*Sir Thomas Powys.*] Sir, By this Resolution, my Client is depriv'd of that Defence I thought I could have made for her, but I submit to the Pleasure of the Committee.

*Mr. Atwood.*] The Examinations in the House of Lords were so lately, that 'tis an easy thing for the Solicitors, who were by, to give an Account of a Contrariety in the Evidence, if there were any.

*A Member.*] Whether you have any other Evidence to offer, but as to this Point?

*Sir Thomas Powys.*] All our Evidence would tend to contradict these Witnesses; and if the reading of those Depositions, won't be allow'd, we must abide your Pleasure, and submit it to you.

*Mr. Dodd.*] We submit it to you; our Witnesses were in concurrence with that sort of Evidence.

*Sir Rowland Gwynne.*] There are several Persons nam'd, who are Persons of Credit and good Reputation; *Mr. Briane* and his Lady, *Mr. Daniel Germaine*, and his Sister: These would be Witnesses of Credit against those that are, you say, not of Credit.

*Council.*] We have summon'd them, and *Mrs. Pitt*, and done all that we could on our Side, to get them here. And I hope you won't prejudge our Case, to say they are in our Interest; that is to determine  
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the Question. We have likewise summon'd Mrs. Pitt, and her two Maids, and whether they will appear or not, that we cannot tell; but this we are ready to make out to you.

Mr. Atwood.] *Susanna Barrington*, the Dutcheſs's Woman, privy to the whole Con- verſation, is prov'd to have been with her ſince the Bill was brought into the Houſe of Lords.

A Member.] Whether he has one living Witneſs to produce, that he can make good his Defence by?

Sir Thomas Powys.] Sir, if you expect an Answer from me, I am aſſur'd, that we have Witneſſes; but if I cannot bring thoſe People againſt themſelves; if I cannot bring *Nichola* againſt *Nichola*, I diſpair of doing any Good, if I bring a thouſand other Witneſſes againſt him. And therefore I pray this Favour of you, That ſince 'tis your Pleaſure, that this Evidence be not allow'd, you will not make a bad Conſtruction of it, that I do not proceed to make a Defence to this Bill; for I cannot truly do it, unleſs I had ſome other Inſtructions from my Client, but ſhall defeat her Expectation, to proceed upon the other Part of the Caſe; ſince what we built upon with good Authority, as we thought, is not thought fit to be admitted.

Sir Rowland Gwynne.] Sir, you are at Liberty to go on, if you have any Thing more



to say, than that you cannot proceed without farther Directions from your Client.

*A Member.*] Whether they have any Thing to offer in the Defence of the Dutchess, upon the Crime she is charg'd with; for I believe 'tis a new Thing for the Council, when their Client is charg'd with a Crime, to say, they cannot defend her, unless they go and ask whether they shall defend her or no? If they have any thing to say in her Defence, we shall be ready to hear it.

*Sir Rowland Gwynne.*] *Sir Thomas Powys*, have you any thing more to say?

*Sir Thomas Powys.*] I cannot but repeat what I have already said, That I would be glad to make the best Defence this Case may bear; and I may say, I have defended it twice with very good Success, and this is a third Time; and I would make the best Defence this Case would bear now. And I must own to you, that the Course of our Evidence we did propose to our selves, is so far broke, by the first Determination you were pleas'd to make, that I cannot venture upon the rest of the Defence, if so be your Pleasure be not to admit of this Matter.

*Sir Rowland Gwynne.*] You may, by any Solicitors or Agents, that were present when these Witnesses were examin'd in the House of Lords, prove what they swore there.

*Mr. Dodd.*]

*Mr. Dodd.*] We apprehend you have already determin'd the Matter, and we cannot now meddle with it ; but if I apprehend it aright from the Chair, it is your Opinion, That we may produce the Solicitors and Agents to give an Account of what was sworn in the House of Lords. Now we are under this Disability by your Determination, That we, relying upon what you have determin'd against us, are not prepar'd with our Solicitors or others, to give Evidence of that Matter ; but in a little Time they will be able to give you an Account of what was then sworn.

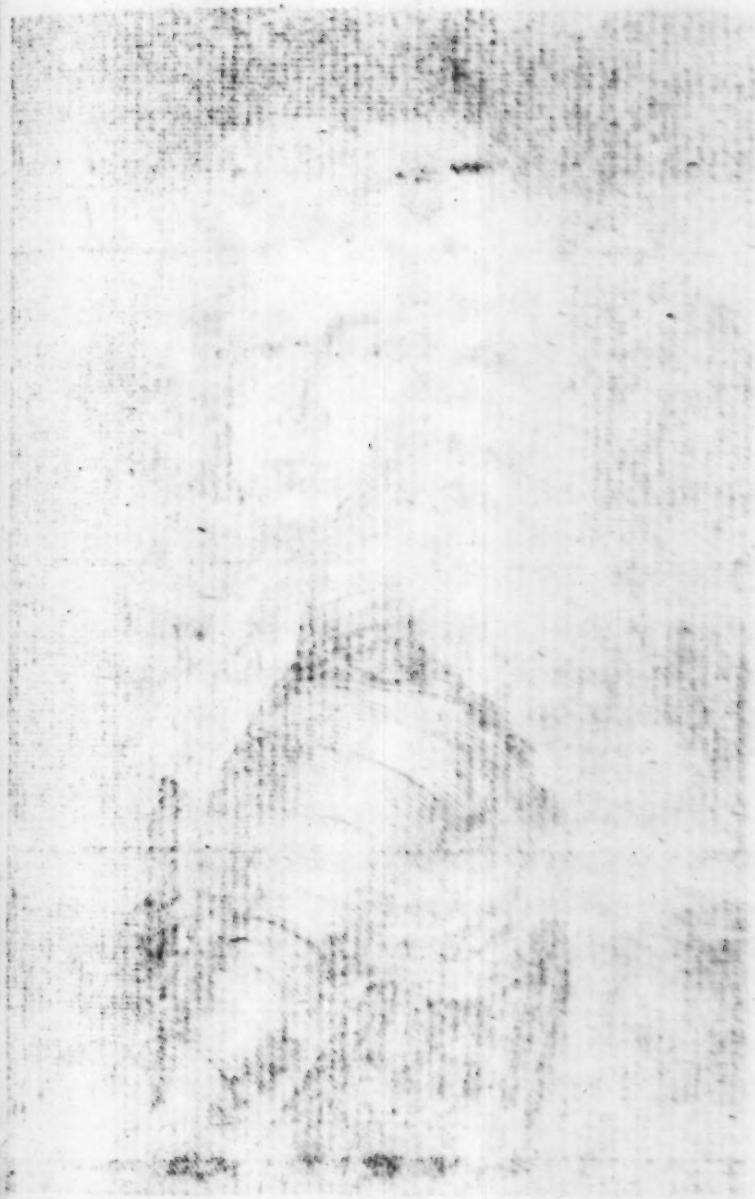
*Mr. Atwood.*] It seems they want to be taught their Lesson.

And then the Council withdrew, and the Committee proceeded upon the Bill, Clause by Clause, and went through it, and order'd the same to be reported.

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